

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**EDWARD J VORWALD**  
Claimant

**APPEAL NO: 06A-UI-09228-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN TRUST & SAVINGS BANK**  
Employer

**OC: 08/20/06 R: 04  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Edward J. Vorwald (claimant) appealed a representative's September 14, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with American Trust & Savings Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2006. The claimant participated in the hearing. The employer received the hearing notice and responded by faxing the Appeals Section a statement on September 22, 2006, indicating that the employer would not be participating in the hearing. This statement was entered into evidence during the hearing as Exhibit A-1. Therefore, the employer did not participate in the hearing. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 26, 2006. He worked full-time as a credit analyst. His last day of work was August 21, 2006. The employer discharged him on August 23, 2006. The reason asserted for the discharge was excessive absenteeism.

The claimant's scheduled work time was 8:00 a.m. to 5:00 p.m., Monday through Friday. Since his employment began, he had missed four days of work, May 25 and May 26, and June 23 and June 26. All the absences were due to being hospitalized with a diagnosis of anxiety, depression and alcoholism and were properly reported to the employer. When he returned to work on June 27 he was verbally warned that should there be any additional absences he would need to provide medical documentation.

The morning of August 22 the claimant determined that he was in need of additional medical treatment; before the start of his shift he called the employer's human resources manager and left a message that he would not be in to work that day, that he would be going to the hospital

for additional treatment. The human resources manager returned the claimant's call before the claimant departed for the hospital, and the claimant told him he needed an additional unspecified amount of time off to receive additional treatment for his diagnosis. The human resources manager indicated that he would get back in touch with the claimant at some later date. On August 23, the human resources manager recontacted the claimant while he was in the hospital. He informed the claimant that the employer had decided to terminate the claimant's employment. The claimant was discharged from the hospital on August 24 and has subsequently been receiving additional treatment through a more outpatient program in which he is encouraged to be employed.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith

errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Absenteeism can constitute misconduct, however, to be misconduct, absences must be both excessive and unexcused. A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Cosper, supra. Because the final absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. While the employer may have had a good business reason for deciding to terminate the claimant's employment, the employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's September 14, 2006 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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