

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE L GIGAROA
Claimant

SIOUX CITY FOUNDRY CO
Employer

APPEAL NO. 13A-UI-03330-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/17/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated March 13, 2013, reference 01, that held the claimant was not discharged for excessive unexcused absenteeism on February 18, 2013 and benefits are allowed. A hearing was held on April 17, 2013. The claimant participated. The employer did not participate. Official notice was taken of the employer appeal documents as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a full-time welder from September 14, 2011 to February 6, 2013. The employer issued claimant written warnings for attendance policy violations.

Claimant called in an absence to work for illness on February 7. He had an accident at home on February 8 where he cut three fingers that required stitching during medical out-patient treatment. He notified the employer he would need to be off work for a period of time and he would provide a doctor's excuse when he was released to return.

Before claimant was medically released, the employer terminated him on February 18 for excessive absences. The employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 24.22(2)i(1) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

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.

The administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on February 18, 2013, for excessive "unexcused" absenteeism.

The employer did not give claimant an opportunity to excuse his February 7 through 18 absence period when it discharged him on February 18. He was under the care and treatment of a doctor for a non-job-related injury and he notified the employer of it with a statement he would provide a doctor excuse when released to return to work. This absence period is for an excusable reason and it does not constitute a current act of job disqualifying misconduct.

DECISION:

The decision of the representative dated March 13, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct in connection with employment on February 18, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css