

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY W SCHUSTER**  
Claimant

**APPEAL NO: 13A-UI-09587-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**OC: 07/14/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 15, 2013 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Janelle Johnston, the staffing-benefits coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 18, 2013. The claimant worked as full-time forklift operator. The employer's written attendance policy informed the claimant he would be discharged if he accumulated ten attendance points.

During his employment, the claimant received his first written warning for attendance issues on May 16 when he had accumulated five attendance points. The claimant received his second written warning on June 25 for accumulating nine attendance points. On July 5, the claimant received his final written warning. He had accumulated ten attendance points, but gave the employer a doctor's note for absences he had June 29 through July 1. The doctor's note reduced his accumulated attendance points from eleven to nine.

When the claimant worked on July 14, he noticed some employees were sent home early. He told his supervisor that if any more employees were going to be sent home, he would volunteer to go home early. Later on July 14, the claimant experienced neck pain after he turned his head and something "popped" in his neck. As a result of the pain, the claimant then asked to go home early. After the claimant rested for a while, the safety manager asked the claimant to return to his station and try to work. When the claimant indicated he was unable to work, the employer sent him home. When the claimant left work, he understood the safety manager would talk to the claimant about options if his neck was not better after he had rested.

Even though no one told the claimant to stay home, the claimant understood the safety manager would call him at home. When no one had called him by 10:30 a.m., the claimant called to find out why the safety manager had not called him. The employer gave the claimant a point for failing to report to work on July 15. Since no one told the claimant to stay home, the employer discharged the claimant on July 15 for violating the employer's attendance policy by accumulating ten attendance points.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Even though no one told the claimant to stay home until the safety manager called him on July 15 and he knew his job was in jeopardy for on-going attendance issues, the claimant used poor judgment and made a good faith error when he misunderstood the safety manager would call him at home to discuss options he had concerning his neck pain. The claimant had no plans to report this as a work-related injury because this was a pre-existing condition. If the claimant had not misunderstood the safety manager would call him at his home to discuss his options, the claimant would have reported to work. The claimant could also have gone to a doctor because a doctor is treating him for this, but he still would have received one point or his tenth attendance point for his July 15 absence.

The employer established business reasons for discharging the claimant. The claimant accumulated ten attendance points. His most recent attendance point occurred because the claimant misunderstood that the safety manager would call him at his home on July 15 to discuss his options regarding the neck pain he experienced. The claimant did not intentionally fail to work as scheduled on July 15. He did not commit work-connected misconduct. As of July 14, 2013, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's August 15, 2013 determination (reference 03) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 14, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css