

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OLIVER L LEWIS
Claimant

APPEAL NO. 13A-UI-06817-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 08/19/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 31, 2013, reference 06, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 2, 2013, but the matter was reopened because of miscommunication with the claimant about the date and time of the hearing. A reopened hearing was held on August 13, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Eric Jackson participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from February 20, 2013, to May 9, 2013. The claimant was informed and understood that under the employer's work rules, employees were subject to discharge for having five attendance incidents in the first 90 days and were required to notify the employer if they were not able to work as scheduled.

The claimant was absent on March 21 and 17. On May 3, when he signed in late to his work area because of equipment problems, he was suspended for three days.

The claimant is prone to migraine headaches. On May 10, the claimant experienced a severe headache. He was too sick to work. He called in properly to report his absence.

The employer discharged the claimant for excessive absenteeism when he reported to work on May 13, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The claimant's final absence was properly reported and was for illness. No current act of work-connected misconduct has been proven.

DECISION:

The unemployment insurance decision dated May 31, 2013, reference 06, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css