

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM V KRULA
Claimant

APPEAL NO: 08A-UI-01585-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 01/13/08 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Wells Dairy, Inc. (employer) appealed a representative's February 8, 2008 decision (reference 01) that concluded William V. Krula (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 3, 2008. The claimant participated in the hearing with his attorney, Dennis McElwain. Josh Burrows, a representative with TALX, appeared on the employer's behalf. Mark McCarty testified for the employer. During the hearing, Employer Exhibits One through Four were offered and admitted as 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on January 31, 2005. The claimant worked as a full-time freeze specialist trainee. L.E. supervised the claimant. When the claimant started working, he received a copy of the employer's attendance policy. (Employer Exhibit One.) On August 10, 2006, the employer clarified the employer's attendance policy. The claimant received a copy of the clarification. The employer explained that if an employee does not call prior to the scheduled start time and talk directly to a supervisor during the shift, the employer considers this an unexcused absence, which results in a three-day suspension. The second offense of failing to properly call-in within one year results in the employee's termination. (Employer Exhibit Two.)

On March 8, 2007, the claimant received a three-day suspension and a written warning for failing to properly notify he was unable to work. The claimant overslept and called the employer but did not call before his scheduled shift. (Employer Exhibit Three.)

During his employment, the claimant used FMLA when he had knee surgery and to take care of his wife. The claimant's wife has a medical condition that sometimes requires him to take care of her on a 24-hour basis. Just prior to January 15, the claimant's wife had medical issues and the claimant took care of her around the clock. On January 15, the claimant called the employer before his scheduled shift time of 4:25 a.m. The claimant did not know what number to contact his supervisor, so he called the main office. No one answered the phone and the claimant was unable to leave a voice message on the phone. The claimant continued taking care of his wife until her medical condition stabilized. Before the claimant went to sleep, he called the employer by remembering a day-shift supervisor's phone number. At 5:34 a.m., the claimant left a message that he was unable to work as scheduled that day. The claimant then went to sleep and did not wake up until after his scheduled shift, or after 2:00 p.m. The claimant did not attempt to call the employer after he woke after his shift.

On January 16, the claimant reported to work and told his supervisor what had happened the day before. Since the claimant did not personally talk to a supervisor, pursuant to the employer's attendance policy, the employer discharged him for having a second improper call-in during a 12-month time frame. The claimant had used all his FMLA and was not eligible for it again until February 2008.

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 section 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer followed the employer's policy and discharged the claimant for justifiable business reasons. The evidence does not establish that the claimant intentionally failed to properly call in and let the employer know that he was unable to work on January 15. Since the claimant had previously asked for current phone numbers a month earlier but had not received the requested numbers, he called the phone numbers he remembered. As a result of his wife's medical condition and because he did not initially remember the phone number for a day shift supervisor, the claimant did not leave a message until after his shift started. The evidence

established the claimant tried to contact the employer before his shift started. Unfortunately, the claimant was exhausted after taking care of his wife and did not again wake up until after his shift ended. By that time, it was too late to call and talk to a supervisor. On January 15, the claimant did not intentionally fail to follow the employer's call-in procedure nor did he intentionally disregard the employer's interests when he did not report to work that day. For unemployment insurance purposes, the claimant did not commit a current act of work-connected misconduct. As of January 13, 2008, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 8, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of January 13, 2008, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs