

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM D POLSON
Claimant

APPEAL NO. 14A-UI-04543-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AJS OF DES MOINES INC
Employer

OC: 03/30/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 21, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 21, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Scott Schwiesow participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from October 7, 2013, to March 25, 2014. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant received a first written warning on November 13 for being absent due to illness on October 21 and 22, tardy on November 8, and absent on November 12 due to car trouble. He properly notified the employer regarding his absences. He received a final written warning on November 27 for being absent due to illness on November 26 with proper notice.

The claimant was tardy on December 12 and February 3. He was absent due to illness on February 5, 6, 7, and 10 with proper notice to the employer. He was absent due to illness on February 18, 19, 20, and 21 with proper notice to the employer and a doctor's excuse for the days missed.

The claimant was injured at work on March 4. He was absent on March 5, 6, and 7 with proper notice to the employer and a doctor's excuse for the days missed. He return to work with light-duty restrictions on March 10. He was absent on March 12 and 13 because of pain due to the injury that caused him to be unable to work. The claimant had a schedule appointment with his physical therapist on the morning of March 14. After the appointment, he reported back to work and told the secretary that he was released with no restrictions. The secretary told the

claimant that he would need a release from a doctor. He contacted the doctor. The doctor consulted with the physical therapist and released the claimant to full duty on March 17. The claimant provided this release to the employer.

The claimant returned to work on March 17 and worked through March 25, 2014, when he was discharged for excessive absenteeism.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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).

All of the claimant's absences were due legitimate illness or injury and were properly reported. The claimant's final absence on March 14 was a partial absence supported by a doctor's statement. The claimant notified the employer that day that the doctor had decided that he would not be released until March 17. No willful and substantial misconduct has been proven in this case.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated April 21, 2014, reference 01, is affirmed. 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