

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS J JESS
Claimant

APPEAL NO. 08A-UI-01594-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

**OC: 01/06/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Travis J. Jess (claimant) appealed a representative's February 11, 2008 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits, and the account of A-Lert (employer) would not be charged because the claimant had been discharged for disqualifying 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. Julie Sumner appeared on the employer's behalf. During the hearing, Employer Exhibit One was 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 March 30, 2007. The claimant worked as a full-time iron worker. The employer requires employees to notify the employer before a scheduled shift when the employee is unable to work as scheduled. If an employee does not call or report to work for three days, the employer considers the employee to have voluntarily quit employment. When an employee has excessive absenteeism, the employer can discharge the employee. (Employer Exhibit One.) A jobsite supervisor decides what discipline will be imposed upon an employee.

On November 12, 2007, the claimant received a written warning for excessive absenteeism. After the claimant called in late on November 14, did not call or report to work on December 4 and called in late or came to work late on December 5, 18 and 20, the employer gave the claimant another written warning and a one-day suspension on December 20. The claimant's supervisor warned him that further attendance problems could result in his termination.

On January 9, 2008, the claimant did not properly notify the employer before his shift that he was unable to work. The claimant did not report to work this day. On January 9, the claimant

was on his way to work when he experienced car problems. The claimant does not have a cell phone and the gas station where his car was taken would not let the claimant use the phone. The claimant walked back to his home, about six miles, and called the employer as soon as he got home.

Although the on-site attendance policy indicates employees will receive a one-day, a two-day, a three-day and then termination if there is an on-going attendance issue, the employer discharged the claimant on January 9 for violating the employer's attendance policy. Many of the claimant's recent absences occurred when the claimant's son was ill and had to be taken to the hospital.

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 presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

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 claimant knew or should have known his job was potentially in jeopardy after he received a one-day suspension for continuing attendance issues on December 20, 2007. On January 9, the claimant was in the process of going to work when he had car problems. The claimant called the employer as soon as he could and let the employer know why he would not be at work at that day. Under these facts, the employer established justifiable reasons for discharging the claimant. The claimant, however, did not intentionally fail to work as scheduled. When his vehicle broke down on the way to work, he was prevented from calling in before his shift. On January 9, 2008, the claimant did not intentionally fail to work as scheduled nor did he intentionally disregard the employer's rule about notifying the employer before his shift that he had problems getting to work. The claimant did not commit a current act of work-connected misconduct. As of January 6, 2008, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 11, 2008 decision (reference 03) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of January 6, 2008, the claimant is qualified to receive

benefits, provided he meets all other eligibility requirement. The employers' account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css