

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARTON J HAIGH**  
Claimant

**APPEAL NO. 11A-UI-03477-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY LLC**  
Employer

**OC: 02/13/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 17, 2011, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 11, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Kimberly Haigh. No one 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 from July 10, 1978, to January 11, 2011, as an outside truck driver for the employer auto parts company.

The claimant was scheduled to work on January 12, 13, and 14, 2011. He was arrested on January 12 and confined to jail due to charges of operating a vehicle while intoxicated (OWI) and possession of drugs. The claimant was not able to call the employer and asked his wife to contact his supervisor to let him know what had happened. His wife called his supervisor twice on January 14 but he was not available as he was on vacation that day. His wife left messages to inform the supervisor about her husband's situation. The claimant's brother also called the human resources manager on the claimant's behalf on January 17 and left a message to return the call regarding the claimant's situation.

On January 18, the employer discharged the claimant under the work rule that states that an employee who is absent on three consecutive days without notice to the employer is discharged. The employer sent a letter on January 18 stating he was terminated effective January 14 due to three days of absence without notice.

The claimant was released from jail on January 20 and immediately reported to work and talked to the human resources director. Despite the fact that the claimant had never had any problems with attendance in the 32 years he had worked for the company and the employer had continued to employ other workers with OWI convictions and drug offenses, the decision to

discharge the claimant stood. The claimant has pleaded not guilty to the charges and has not been convicted.

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

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The Agency decided the claimant quit using 871 IAC 24.24(16) that states the claimant is deemed to have quit when he become incarcerated. This rule creates a rebuttable presumption and in this case the claimant did not quit he was discharged.

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

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 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 substantial and 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 reason given for the termination was that as of January 14, the claimant had been absent for three days without notice to the employer. This was an erroneous reason as the claimant's supervisor was notified on January 14 that the claimant was not able to report to work. The claimant's wife did not know the supervisor was on vacation that day or that there was another number to call to report an absence. The employer has failed to meet its burden of proof in this case.

**DECISION:**

The unemployment insurance decision dated March 17, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs