

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY W PHELPS
Claimant

APPEAL NO. 09A-UI-04777-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEORGE WHITE CHEVROLET INC
Employer

OC: 05/11/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 18, 2009, reference 07, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 22, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Scott Holbach 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 an oil and lube technician from October 31, 2008, to January 22, 2009. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer before the start of their shift if they were not able to work as scheduled.

During the time the claimant worked for the employer he was late for work five times and left work early four times. He was absent from work three times. On January 10, 2009, he was scheduled to work at 7:30 a.m. It was snowing that day and the claimant had to shovel out his drive and the lane leading to the road, which took extra time. He called in at 8:45 a.m. to report he was going to be late. He was told that work was slow that morning and it was not necessary for him to come in. There were other times that the claimant reported late due to weather. When he left work early, he receiving permission to leave to go to the bank or pay bills. He had never been disciplined for attendance.

On January 20, 2009, the claimant failed to completely tighten the drain plug and oil filter on a car. While moving a car, he accidentally backed into another car. There was minimal damage to the cars, and the claimant was able to buff out all but one small scratch.

He was also upset that day by comments made by coworkers in which he was called a "fag" and "homo." He had complained in the past to the service director, Scott Holbach, about this and

other comments made by coworkers. A few days before January 20, a coworker had told him that no one liked him and suggested that he quit. The claimant complained to Holbach about the comment. Holbach warned the coworker about his remarks. The problems with the coworkers taunting him continued on January 20. Near the end of the day, the claimant was stressed out due to the problems that had happened that day. He asked a supervisor if he could leave work an hour early, which was granted.

The next day, the claimant was experiencing stress to the level where he was feeling ill. He did not want to be subjected to ridicule anymore. He called and informed the employer that he would not be coming in to work.

When the claimant reported to work on January 22, 2009, the employer discharged him for excessive absenteeism and unsatisfactory work.

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 section 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 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).

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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. I believe the claimant was subjected to harassment at work, which created stress to the extent that the claimant had reasonable grounds to miss work. His mistakes on January 20 do not show any willful misconduct or negligence of such a degree of recurrence that it equals willful misconduct in culpability.

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 February 18, 2009, reference 07, 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