

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OWEN C MONDS
Claimant

APPEAL NO: 12A-UI-13333-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN INC
Employer

OC: 10/14/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 31, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his mother, Mary Monds-Haskins. His mother was a witness. Susie Deskin, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2011. He worked as a full-time service agent. The employer has a written attendance policy that the claimant may not have seen.

The employer does not note that an employee is late if they are less than 10 or 15 minutes late for work. After the claimant reported to work late on August 5, 7 and 10, the employer gave him a written warning on August 14, 2012. The claimant was late for work on August 14. The warning informed the claimant that if he continued to report to work late, he could be discharged.

After the claimant received the August 14 warning, the employer did not give him another warning even though on August 28 he was absent after he called to notify the employer his grandfather was gravely ill and he was going to be with him. On September 10, the claimant was gone for work 30 minutes in the middle of his shift. On September 13, he worked 30 minutes, left for 90 minutes and then returned and worked the rest of his shift. On September 14, the claimant left work early. On September 16 and 17, the claimant was 15 to 20 minutes late for work. On September 28, the claimant took an hour for lunch instead of the 30 minutes allowed for lunch.

Earlier in September, the employer granted the claimant time off to go to California. The claimant understood the employer granted him time off from October 1 through 11. Even though the claimant did not have any accrued time to take off this time, the employer granted him time off in October.

On September 28, the employer asked the claimant if he would be at work as scheduled on September 30. The claimant assured the employer he would be at work on September 30. On September 30, the claimant called and left a message that he would not be at work. His mother's husband passed away on September 29. The claimant did not feel well on September 30. He went to California on October 1 and returned to Iowa on October 5. He left a note on Deskin's desk on October 6 about a job in Arizona. The claimant flew to Arizona on October 6. When he was in the airport on his way home on October 11, he received a call from the employer informing him that he had been discharged because he was not at work on October 11.

After the claimant did not report to work on September 30 and left a note on October 6, Deskin concluded the claimant misled her about going to California and assumed he was in town and could have worked since October 6.

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 defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to 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).

As of August 14, the claimant knew or should have known his job could be jeopardy after receiving his first written warning for on-going attendance issues. Even though the claimant did

not work as scheduled on August 28, September 10, 13, 14, 16, 17 and 28, the employer did not give him any more warnings about his attendance. In early September, the employer granted the claimant time off to go to California even though he did not have any time to use as a vacation.

The employer became frustrated when the claimant did not work as scheduled on September 30 even though he told Deskin on September 28 he would be at work. The employer did not know the claimant's mother's husband passed away on September 29. To add to the employer's frustration, Deskin concluded the claimant misled her about amount of time he was going to be in California after she found an October 6 note from him. The employer did not know the claimant returned to Iowa on October 5, but left for Arizona on October 6. The most recent absences, September 30 and October 1 through 11, the claimant either had prior authorization to be gone or he properly notified the employer he was unable to work. The employer did not ask the claimant on October 11 why he had not reported to work on September 30. If the claimant would have indicated in the message he left on September 30 why he was not at work, the employer may not have become frustrated and jumped to some incorrect conclusions.

The employer established business reasons for discharging the claimant. The claimant did not commit a current act of work-connected misconduct. Therefore, as of October 14, 2012, he is qualified to receive benefits.

DECISION:

The representative's October 31, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but he did not commit a current act of work-connected misconduct. As of October 14, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css