

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON R OESTERN
Claimant

APPEAL NO: 15A-UI-01869-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUSCO INTERNATONAL INC
Employer

OC: 01/11/15
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 3, 2015 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated at the March 12 hearing. Stacy Driscoll 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 work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a full time assembler on January 6, 2015. The claimant called and reported he was ill and unable to work on January 7, 2015. Driscoll called the claimant on January 7. During this conversation, she told the claimant he would receive an occurrence for the January 7 absence. The employer has a no-fault attendance policy. The employer understood the claimant felt better and would be at work the next day.

The claimant felt better the next day, but was still ill and unable to work. He understood he could only have one absence during his probation and if he had more than one absence he would be discharged. As a result of this understanding, the claimant believed he no longer had a job because he could not work on January 8 and there was no reasons to notify the employer again to report he was ill and unable to work.

When the claimant did not report to work on January 8, Driscoll called and left him a message. Her message solidified his understanding that more than one absence would result in his termination. Driscoll had told him in her message that a no-call/no-show incident would result in his termination. The claimant did not respond to Driscoll's message until late afternoon. He left a message indicating he still did not feel well, that he understood the employer's policy and knew he no longer had a job.

The claimant established a claim for benefits during the week of January 11, 2015. He has filed for and received benefits since January 11.

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 employer has a no-fault attendance policy and informs new employees they are allowed only one absence during their probation. The claimant reasonably assumed his employment ended when he was still ill and unable to work on January 8, 2015. As a result of this understanding, the claimant did not again notify the employer on January 8 that he was unable to work for a second day. The claimant used poor judgment when he did not contact the employer on January 8 to report he was ill. But based on his understanding of the employer's policy, the claimant did not commit work-connected misconduct. The claimant is qualified to receive benefits.

The employer is not a base-period employer. The employer's account will not be charged during the claimant's current benefit year.

DECISION:

The representative's February 3, 2015 (reference 01) determination is affirmed. The employer discharged the claimant for business reasons. The claimant used poor judgment when he did not contact the employer on January 8, 2015 but he did not commit work-connected misconduct. As of January 11, 2015 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account is not subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can