

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NICHOLAS H KLINGENSMITH JR
#23
500 E 17TH ST S
NEWTON IA 50208

MOEHL MILLWORK INC
5150 SE RIO CT
ANKENY IA 50021

Appeal Number: 06A-UI-01718-DWT
OC: 01/01/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Nicholas H. Klingensmith, Jr. (claimant) appealed a representative's February 1, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Moehl Millwork, Inc. (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 1, 2006. The claimant participated in the hearing. Alicia Clark, Dave Brooks, and Bob Kerr appeared on the employer's behalf. 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 August 1, 2005. The claimant worked as a full-time delivery driver. Brooks was the claimant's supervisor. When the claimant started his employment, the employer told the claimant about the employer's attendance policy. The employer expected employees to notify the employer when the employee was unable to work as scheduled. The employer's attendance policy indicates the employer considers attendance and punctuality important.

On November 4, 2005, the employer talked to the claimant about notifying the employer when he was unable to work as scheduled. The claimant had not contacted the employer about his November 1 and 2 absences. As a result of the November 4 discussion, the claimant understood the employer could discharge him if he again failed to notify the employer when he was absent.

Prior to November 4, the claimant had been absent from work 6.5 days. For these absences the claimant notified the employer. The claimant had also been late for work four times. As of November 4, the claimant had no understanding his job was in jeopardy when he had reported to work late or when he notified the employer he was unable to work as scheduled.

On November 21, the claimant contacted the employer and reported he was ill and was unable to work. The employer considered this an excused absence. On November 29, the claimant had the employer's vehicle and could not get it started. The claimant notified the employer that he had problems getting the vehicle started and would be late for work. The claimant reported to work at 7:30 a.m. instead of 6:00 a.m. While the claimant was at work, he received a call that his wife's grandmother had a medical situation that required immediate attention. The claimant talked to his supervisor before he left work early. On December 2, 2005, the claimant did not punch the time clock until 6:30 a.m. The claimant drove the employer's vehicle to work on December 2. On December 2, 2005, the employer discharged the claimant for repeated attendance problems.

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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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).

The evidence indicates the employer warned the claimant on November 4 that his job was in jeopardy if he failed to notify the employer when he was unable to work. The claimant had no understanding his job was in jeopardy for attendance problems. Prior to November 4, the employer excused more than seven days of absences and the employer said nothing about the four days the claimant had been late for work.

If the claimant rode to work with another employee on December 2 and forgot to punch the time clock, he was not late for work and did not commit a current act of work-connected misconduct. If the claimant drove the employer's vehicle to work and did not get to work until 6:30 a.m., his failure to report to work by 6:00 a.m. is not condoned. When an employee has previously reported to work late and an employer does not warn an employee his job is in jeopardy for reporting to work late, the employee has no understanding how many times an employer will tolerate an employee reporting to work late. Under such circumstances, a claimant has not intentionally and substantially disregarded the employer's interests. The evidence suggests that if the employer had warned the claimant of the consequences of reporting to work late, he would have corrected this.

Under the facts of this case, the claimant did not commit a current act of work-connected misconduct. As of January 1, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 1, 2006 decision (reference 02) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 1, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw