

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL D GLASSCOCK
Claimant

APPEAL NO. 07A-UI-02574-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRIFFIN WHEEL COMPANY
Employer

**OC: 02/11/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Final Act of Misconduct

STATEMENT OF THE CASE:

Daniel D. Glasscock filed a timely appeal from an unemployment insurance decision dated March 7, 2007, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 29, 2007, with Mr. Glasscock participating. Safety and Human Resources Manager Ellen Hackbarth participated for the employer, Griffin Wheel Company.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Daniel D. Glasscock was employed by Griffin Wheel from August 22, 2005, until he was discharged February 12, 2007, because of attendance violations. The final absence occurred on February 11, 2007, when Mr. Glasscock missed work to care for his three-year-old daughter, who was running a temperature of 102 degrees. He notified the employer of the impending absence within the time limits specified in its attendance policy.

Griffin Wheel Company has a no-fault attendance policy. The absence on February 11, 2007, put Mr. Glasscock at the point of discharge under the company's policy.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is not whether the employer was justified in discharging Mr. Glasscock but whether the reason for discharge amounts to misconduct as that term is defined for unemployment insurance purposes in Iowa law. The administrative law judge concludes that the discharge was not a disqualifying event.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements the employer must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). Although excessive unexcused absenteeism is one form of misconduct, absence due to illness properly reported to the employer cannot be held against an individual for unemployment insurance purposes. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7).

The evidence in the record establishes that the final absence was caused by the illness of Mr. Glasscock's three-year-old daughter and his decision as a parent that he needed to tend to his child's illness. As the administrative law judge does not second-guess an employer's decision to discharge an employee, he also does not second-guess a parent's decision to tend to the illness of his or her small child. No disqualification shall be imposed.

DECISION:

The unemployment insurance decision dated March 7, 2007, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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