

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KREGORY P SCHEFFERT
Claimant

APPEAL NO. 08A-UI-01170-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRINCIPAL LIFE INSURANCE CO
Employer

OC: 12/30/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 25, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 18, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Tommie Krehlik participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as an output operator in the employer print-to-mail facility from December 2005 to November 1, 2007. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they had not contacted the employer by the end of the second business day of absence.

The claimant suffers from a serious medical problem for which he receives treatment from a doctor. He had been off work due to this condition on leave under the Family and Medical Leave Act (FMLA) and as of November 2007, he had been certified for intermittent leave under the FMLA due to this illness.

Starting November 1, 2007, the claimant was unable to work due to his medical condition. He called and notified a supervisor that he was sick and unable to work. He continued to call in regularly afterward through December 14, 2007. He was informed by a supervisor that it was not necessary for him to call every day and that he should keep the employer informed about when he was able to work again.

The claimant did not report to work due to illness on December 16, 17, and 18, 2007. He did not notify the employer that he would not be at work because he believed that he had previously told a supervisor that he still was unable to work. After the claimant was absent without notice

for a third day on December 18, 2007, the employer sent him a letter informing him that his employment was terminated due to his absences without notice on December 16, 17, and 18.

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.

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 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).

No willful and substantial misconduct has been proven in this case. The claimant was absent due to legitimate medical reasons. He had been told that it was not necessary for him to call every day.

DECISION:

The unemployment insurance decision dated January 25, 2008, reference 01, is affirmed. 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/pjs