

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

KEVIN T ACKERSON
1432 CROTON RD
FARMINGTON IA 52626

APAC CUSTOMER SERVICES OF IOWA
C/O TALX UCM SERVICES OF INC
PO BO 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-01615-DWT
OC 01/04/04 R 04
Claimant: Respondent (1)

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 are 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:

APAC Customer Services of Iowa LLC (employer) appealed a representative's February 6, 2004 decision (reference 01) that concluded Kevin T. Ackerson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2004. The claimant participated in the hearing. Sue Lester, a human resource manager, 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 claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 22, 2003. The claimant worked full time as a customer service representative. The claimant experienced medical problems and his last full day of work was July 22, 2003. He returned to work on August 18 but only worked 30 minutes. On a month-to-month basis the claimant's doctor restricted him from working.

In July 2003, the claimant had not worked long enough to qualify for leave under the Family Medical Leave Act. The employer, however, allowed him to take a personal leave. As of October 23, 2003, the employer understood the claimant was to return to work on November 24. The claimant had a doctor's appointment on November 24. His doctor did not release the claimant to return to work and the November work restriction was faxed to the employer. On November 25, the employer's manager received the work restriction to extend the claimant's leave until December 22. On November 26, 2003, the claimant learned the employer would not extend his leave past November 24. The claimant also learned he could either resign or would be discharged.

On December 3, the employer sent the claimant a letter indicating his employment was terminated because the employer would not grant an extension of the claimant's leave after November 24. The employer considered the claimant to have abandoned his job because he did not report to work on November 24, 25, or 26. The employer closed its Burlington office where the claimant worked on December 19, 2003. The claimant's doctor released him to work on December 22, 2003.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts do not establish that the claimant voluntarily quit his employment. Instead, the employer initiated the employment separation by denying the claimant any more personal leave even though the claimant was not released to return to work until December 22, 2003. 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).

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 employer ended the employment relationship because the claimant was unable to work and had been unable to work for medical reasons since July 22, 2003. The employer also knew the Burlington office was closing in December. The employer may have had compelling business reasons for discharging the claimant. The employer, however, knew the claimant had not abandoned his job. Instead, the claimant could not return to work on November 24, 25, or 26 because his doctor did not release him to return to work. The claimant did not commit work-connected misconduct. As of January 4, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 6, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 4, 2004, 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/kjf