

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVE R SPERBER**  
Claimant

**APPEAL NO. 15A-UI-07688-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EATON CORPORATION**  
Employer

**OC: 06/14/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Steve Sperber (claimant) appealed a representative's July 1, 2015, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Eaton Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 4, 2015. The claimant participated personally. The employer participated by Natalie Petersen-Menefee, Human Resources representative, and Brandon Boles, First Shift Supervisor.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 21, 2011, as a full-time assembler. The claimant received the employer's handbook. The claimant always properly reported his absences. The claimant was absent on September 2, 2014, for an unknown reason. On September 12, 2014, the claimant was absent for medical issues with his right knee. The claimant was on short-term disability from September 25 through November 9, 2014, for issues with his knee. The claimant was absent for an unknown reason from November 11 through 14, 2014. The claimant could only see from one eye and could not drive to work at night. He did not work from December 2 through 4, 2014. From December 5, through 12, 2014, the claimant was absent to have cataract surgery. The claimant was on short-term disability from February 24 through May 27, 2015, when he had knee replacement surgery. The employer verbally warned the claimant about his attendance.

On February 19, 2015, the employer issued the claimant a written letter of concern for attendance issues. The employer notified the claimant that further infractions could result in termination from employment. The claimant was absent on June 9 and 12, 2015, because his knee was swollen. On June 15, 2015, the letter of concern was revised, reduced, and reissued. The employer notified the claimant that further infractions could result in termination from employment. There were no further occurrences after June 15, 2015.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of

absence was a properly reported medical issue which occurred on June 12, 2015. The claimant's absence does not amount to job misconduct because it was properly reported. In fact, the claimant was never absent for any other reason except medical issues after his first warning. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's July 1, 2015, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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