

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE R PALMER
Claimant

APPEAL NO: 12A-UI-10854-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE PRINTER INC
Employer

**OC: 06/17/12
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 28, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. David Whitlatch and Janet Stice appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 22, 2011. He worked as a full-time digital press operator. The employer does not have a written attendance policy, but a manager has the discretion to discharge an employee if the employee has three unexcused absences in 90 days. When the claimant started working, the employer told him he had to report to work on time and work as scheduled.

On December 23 around 12:15 a.m., the claimant called and reported he felt ill and was unable to work. Based on the background noise, the employer thought the claimant may have been at a bar when he called. On December 27, the employer talked to the claimant about his December 23 absence and the importance of working as scheduled.

On February 20, 2012, the employer notified the claimant and others that they were not needed at work that night. On February 21, the claimant called and reported that he was unable to work as scheduled. On March 1, the employer notified the claimant he was not needed at work that night. On March 2, the claimant called to report he was unable to work as scheduled. On April 4, the claimant left a message that he had car problems and was unable to get to work. When the employer immediately tried calling the claimant, the claimant's phone number rang busy. The claimant did not return the employer's phone call. The claimant lives just a few blocks from work and the employer called to find out if someone could give the claimant a ride

to work. On April 5, the employer talked to the claimant and discharged him. The employer discharged the claimant for excessive, unexcused absenteeism.

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. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

When the claimant started working, the employer explained to him the importance of working as scheduled. The employer noticed that if the claimant was told he did not have to work one shift, he called the next day to report he was unable to work. Even though the claimant may have had car issues on April 4, the claimant lived close to the employer. Since the claimant did not participate in the hearing, it is not known why he did not report to work on February 21 and March 2. Also, it is not known why the claimant did not answer his phone when the employer tried to call him on April 4 or did not walk to work since he lives close to the employer's business. Based on the number of the claimant's unexcused absences, the employer discharged him for reasons constituting work-connected misconduct. As of April 5, 2012, the claimant is not qualified to receive benefits.

The issues of overpayment and whether the claimant is eligible for a waiver of any overpayment of benefits he may have received since June 17, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's August 28, 2012 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 17, 2012. This

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issues of overpayment and waiver of overpayment are **Remanded** to the Claims Section to determine both issues.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs