

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROY E SAPP**  
Claimant

**APPEAL NO. 13A-UI-08619-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PIONEER HI-BRED INTERNATIONAL INC**  
Employer

**OC: 06/23/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated July 15, 2013, reference 01, which held claimant ineligible to receive unemployment insurance benefits finding that he voluntarily quit work because of a non-work-related illness or injury. After due notice, a telephone hearing was held on August 29, 2013. Mr. Sapp participated. The employer participated by Mr. Dan Deherkoop, Operations Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Roy Sapp was employed by the captioned employer from August 1994 until April 26, 2013 when he was discharged from employment. Mr. Sapp most recently worked as a full-time forklift operator and was paid by the hour.

Mr. Sapp was discharged by letter dated April 26, 2013 when the claimant was unable to return to work for medical reasons. The claimant had not filed for protection under the Family Medical Leave Act and had not supplied documentation to the company's insurance carrier which would have allowed Mr. Sapp to receive disability payments through the insurance carrier.

Mr. Sapp had been off work for a non-work injury earlier in the year but had returned in February 2013. Subsequently, the claimant sustained an injury to his neck and was unable to report for scheduled work. Mr. Sapp called in each day in advance of his shift as required by company policy to report his inability to report to work due to illness or injury. Although the claimant had been unable to provide medical documentation verifying the cause of his injury, the claimant had informed the company that he had a doctor's appointment in Iowa City that was to take place in the first week of May. It was the claimant's hope that the doctor's appointment would determine the cause of his neck problem and that information could then be related to the employer.

Under established company policies employees are discharged if they have used all PTO time, sick time or other time available to them and are not receiving disability payments through the company's insurance carrier or protected under the Family Medical Leave Act. Because the claimant had used up all available time to him, he was discharged from employment effective April 26, 2013. Although the employer believed that the claimant was ill or injured, the employer considered it to be a non-work-related illness or injury and claimant did not indicate that it was work related until approximately one week later.

### **REASONING AND CONCLUSIONS OF 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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation, oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, providing the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Mr. Sapp did follow the employer's attendance policy by calling in each day prior to the beginning of his shift to report his impending absence and the reason for it. Based upon the claimant's proper notification of the employer of his absences due to illness or injury, the absences were excused and do not constitute misconduct in connection with the employment.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. Accordingly, the claimant is eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law including the requirement that he be able and available for work each week that he claims unemployment insurance benefits.

**DECISION:**

The representative's decision dated July 15, 2013, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs