

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PETE EIVINS
Claimant

APPEAL NO. 09A-UI-05903-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF AMES
Employer

**Original Claim: 03/15/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 6, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 13, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Jay Smith, attorney at law. Judy Parks participated in the hearing on behalf of the employer with witnesses, Michelle Price, Inta Bingham, and John Dunn. Exhibits A, B, C, 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 full time for the employer from June 12, 2000, to February 13, 2009, as an operator at the employer's water pollution plant. The claimant was suspended in May 2008 for repeated tardiness. The claimant was late for work on September 23, October 16, and November 5, 2008. On December 1, 2008, he was suspended for this conduct. He was warned that further tardiness could lead to his termination.

The claimant suffers from chronic lower back pain and obstructive sleep apnea. In July 2008, he was advised by his doctor to use a CPAP machine to treat his sleep apnea. The claimant began using the CPAP machine. The employer was notified about this and that the condition caused the claimant to experience drowsiness.

On February 10, 2009, the claimant submitted a certification of health care provider completed by his doctor certifying that he had chronic health conditions (chronic lower back pain and obstructive sleep apnea) requiring treatment that would make it necessary for him to be off work intermittently.

In the early morning hours on February 12, 2009, the claimant woke up with a severe headache, disrupting his sleep. He took some medication for the headache. The claimant set multiple

alarms to make sure he woke up in the morning, but he slept through the alarms and did not wake up until about 45 minutes after the start of his shift. He called in and reported that he was not able to work that day. The claimant obtained a doctor's excuse for his absence on February 12, 2009, and submitted it to the employer.

After working on February 13, 2009, the claimant was suspended and then discharged on February 20, 2009, for excessive absenteeism.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful and substantial misconduct has been proven in this case. His absence and late call-in on February 12 was due to legitimate medical reasons.

DECISION:

The unemployment insurance decision dated April 6, 2009, reference 01, is reversed. 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/kjw