

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOBY O NEFF**  
Claimant

**APPEAL NO. 11A-UI-09358-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLUE RIDGE PAPER PRODUCTS INC**  
Employer

**OC: 06/12/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 8, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 11, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Megan Danner participated in the hearing on behalf of the employer. Exhibits One through Eight 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 as a sealer inspector from February 13, 2005, to May 4, 2011. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge after reaching seven attendance occurrences twice in 12 months.

The claimant was verbally warned about his absenteeism on November 6, 2010, after he had reached 5½ points. He was given a written warning on December 21, 2010, after he had reached 6½ points and a suspension on March 17, 2011, after he had reached 7 points. The claimant's absences were due to his or a family member's legitimate illness and were properly reported.

The claimant left work early on April 28 because he was sick and unable to work. He notified the employer that he was unable to finish his shift and was given permission to leave. He was told that he would need a doctor's excuse. The claimant went to the doctor on April 29 and was given a statement excusing him from working on April 28 and 29. He turned it in to the employer before the start of his shift.

The claimant worked on April 30 and from May 2 through 4, 2011. At the end of his shift on May 4, the employer discharged him for having reached 7 attendance occurrences for a second time in 12 months. The claimant was arrested after a domestic disturbance involving his wife on the evening of April 29, but this incident did not contribute to his absences.

**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).

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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

While the employer may have been justified in discharging the claimant under its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant's absences were due to legitimate reasons and were properly reported. His final absences were supported by a medical excuse.

**DECISION:**

The unemployment insurance decision dated July 8, 2011, reference 01, is affirmed. 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/css