

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEHO MUSIC
Claimant

APPEAL NO. 11A-UI-04854-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

OC: 12/19/10
Claimant: Respondent (1)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer, Titan Tire, filed an appeal from a decision dated April 6, 2011, reference 02. The decision allowed benefits to the claimant, Meho Music. After due notice was issued, a hearing was held by telephone conference call on May 10, 2011. The claimant participated on his own behalf and Janja Pavetic-Dickey acted as interpreter. The employer participated by Human Resources Director Deborah Sgambati

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Meho Music was employed by Titan from March 2, 2004 until March 15, 2011 as a full-time tire maker. Beginning March 2, 2011, he began calling in absent due to illness. On March 10, 2011, Human Resources Director Deborah Sgambati sent him a letter stating he must contact her on or before March 14, 2011, to discuss his absences.

The claimant's wife called the guards on Sunday, March 13, 2011, to state the letter had been received. The guard contacted Ms. Sgambati at home, who said to inform the claimant's wife that Mr. Music must contact her personally the next day. On March 14, 2011, the claimant did contact her and she said there would be a meeting the next day.

At the meeting, the claimant presented documentation from a doctor about his condition, which he asserted was work-related. The employer did not accept it because the claimant had not properly reported the incident as a workers' compensation injury. He had not reported this as a work-related incident because he had already told his supervisor the day it happened he had breathed in some dust, collapsed at work, and was taken to the emergency room by taxi.

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.

871 IAC 24.32(7) provides:

(7) 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.

The claimant was discharged for excessive absenteeism. The final nine absences were due to illness and were properly reported. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). There was no current final act of misconduct which precipitated the discharge as required by 871 IAC 24.32(8).

The employer considers the claimant to have violated policy by failing to contact the human resources department when he was going to be gone for more than a day. For extended absences, an employee is placed on a leave. There is no specific time period set out for how many days in a row an employee must be gone before the human resources department must be contacted. In addition, it appears the claimant was not aware, from day to day, whether he would be able to come to work again.

The employer has failed to establish job-related misconduct sufficient to warrant a denial of unemployment benefits. Disqualification may not be imposed.

DECISION:

The representative's decision of April 6, 2011, reference 02, is affirmed. Meho Music is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw