

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSE MUELLER**  
Claimant

**APPEAL NO. 14A-UI-12247-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEE ZEE INC**  
Employer

**OC: 11/02/14  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jesse Mueller (claimant) appealed a representative's November 20, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Dee Zee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 16, 2014. The claimant participated personally. The employer participated by Lacey Leichliter, Human Resources Assistant. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 25, 2012, as a full-time assembler working Monday through Friday, 7:00 a.m. to 3:00 p.m. The claimant signed for receipt of the employer's handbook on June 22, 2012, and March 20, 2014. The handbook indicates an employee will be terminated if he accumulates 48 attendance points. Employees are supposed to report an absence 30 minutes prior to the start of their shift. Employees who are absent for three consecutive days without notice are considered to have abandoned their jobs. On January 25, June 3, September 16, and October 28, 2013, the employer issued the claimant warnings for attendance. Each time the employer notified the claimant that further infractions could result in termination from employment.

On October 9, 2014, the claimant was very ill and bleeding. He was so sick he could not call the employer until after the start of his shift. The employer assessed the claimant two attendance points. A friend took the claimant to the hospital where he was diagnosed with hepatitis c. On October 10, 2014, the claimant was still very sick and unable to call the employer prior to the start of his shift. The employer gave the claimant two more points for a total of 31 attendance points.

On his next scheduled day of work, October 13, 2014, the claimant appeared for work. The employer said the claimant was terminated. The employer told the claimant that if he could provide documentation and sign some papers, he could return to work. The claimant was able to go to the hospital and obtain the papers on October 14, 2014. On October 15, 2014, he returned to the workplace. The employer told the claimant he was absent from work for three days without notice. The claimant did not understand he had to provide the papers within a short period of time.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of

job-related misconduct to terminate the claimant on October 13, 2014. He had not accumulated enough attendance points to warrant termination. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for which he was terminated. The person who terminated the claimant was not present to give testimony at the appeal hearing.

**DECISION:**

The representative's November 20, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs