

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS T CLARK
Claimant

APPEAL NO. 09A-UI-17758-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J.S.M. MARION LTD
Employer

OC: 10/11/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 19, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 6, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Diana Hradek participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from June 3, 2009, to September 18, 2009. The claimant was informed and understood that under the employer's work rules, employees were required to notify a supervisor if they were not able to work as scheduled. The claimant received a warning when he called in to report he was going to be late for work on June 26, but he did not report to work. He was late for work twice in July and once in August. He was also warned about an absence without notice on August 25.

The claimant was scheduled to work on September 19. The claimant had to travel to Chicago because his father was seriously ill. Before his shift, he spoke with two supervisors and told them about his father's medical condition and need to be absent that day. The claimant told the supervisor that he hoped to back to work on Monday, September 21.

The claimant was scheduled to work at about 3:00 p.m. on September 21. When the claimant got back to town at about 1:00 or 2:00 p.m., his stepson, who also worked for the employer, said the assistant manager had told him to tell the claimant not to bother coming in because he was done due to missing too much work. The claimant tried calling the store manager, Diana Hradek, to find out what his employment status was. By the time he spoke with Hradek, the claimant had been terminated because he was considered to have been absent without notice on September 21, 22, and 23.

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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The employer has failed to prove the claimant committed willful and substantial misconduct. His absence on September 19 was for a legitimate family medical emergency and was properly reported. His absences afterward were due to receiving information that he had been terminated.

DECISION:

The unemployment insurance decision dated November 19, 2009, 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