

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER D CORTEZ**  
Claimant

**APPEAL NO: 10A-UI-04739-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HON COMPANY**  
Employer

**OC: 02/07/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's March 15, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on May 6, 2010. The claimant participated in the hearing. Denise Norman represented the employer. Sue McDonald, a human resource generalist, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 21, 2008. He worked as a full-time operator. The claimant received a copy of the employer's attendance policy when he started working for the employer.

On September 24, 2009, the employer issued the claimant a final written warning. The warning informed the claimant that if he had two attendance incidents before March 24, 2010, he would be discharged. Before the employer gave the claimant his final written warning, the claimant notified the employer on September 28 that he had been stopped by the police. The claimant did not report to work on September 28. On September 30, the employer gave the claimant the September 24 written warning.

The claimant did not have another attendance issue until February 17, 2010, when the claimant did not hear his alarm clock and overslept. As soon as the claimant woke up he called his production tech, explained that he had overslept and would be at work late. The claimant was an hour late for work.

On February 18, 2010, the employer discharged the claimant for violating the employer's attendance policy by being late on February 17 and having two more attendance incidents before March 24, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

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 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established justifiable business reasons for discharging the claimant. Pursuant to the employer's attendance policy, the claimant violated the policy. The evidence does not, however, establish that the claimant intentionally violated the policy. After he received the final written warning on September 30, the first time he had any attendance issue was February 17, 2010. The claimant did not intentionally oversleep. As soon as he woke up, he notified the employer he would be late and reported to work as soon as he could. The claimant did not intentionally fail to work as scheduled on February 17, 2010. He did not commit work-connected misconduct. Therefore as of February 14, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's March 15, 2010 decision (reference 01) is affirmed. On February 18, 2010, the employer discharged the claimant for justifiable business reasons. These reasons do not constitute work-connected misconduct. As of February 14, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css