

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATT L JOHNSON

Claimant

APPEAL NO. 12A-UI-07789-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITTY BEE HONEY INC

Employer

OC: 05/20/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 19, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 24, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynnette Schmitz participated in the hearing on behalf of the employer with a witness, Tony Schmitz.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a production employee from January 30, 2012, to May 17, 2012. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant was late for work on February 21, March 22, April 11, and April 30, 2012.

He was scheduled to work from 7:30 a.m. to 4:30 p.m. on May 18. He had trouble sleeping the night before due to nightmares. His girlfriend tried waking him before she left for work at about 5:15 a.m. but he continued to sleep until she got back from work at about 3 p.m. Later that afternoon, the claimant called the general manager, Tony Schmitz, and informed him about the problems he had sleeping and that he had woken up at about 3:30 p.m. Schmitz told him that he should see a doctor to get things checked out.

The claimant was not able to get in to see a doctor until the afternoon of Monday, May 21. He stopped at the workplace and informed a supervisor that he was going to see the doctor that day. The claimant was told to call in after he saw the doctor and let them know what happened. The doctor provided the claimant with a statement excusing him from working on May 18. That evening the claimant sent a text message to the office manager letting her know that he had went to the doctor and would be at work the next day. The office manager told the claimant to call Tony Schmitz before reporting to work the next day.

When the claimant called Schmitz on the morning of May 21, Schmitz told him that he was discharged. The employer discharged the claimant due to his late arrivals at work. The claimant had not been disciplined regarding his attendance.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim.

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).

871 IAC 24.32(8) provides: 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.

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, 11 (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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he was excused from working on May 18 by a doctor. I also believe the claimant's testimony that he was not disciplined regarding his attendance.

The general manager had recommended that the claimant get checked out by a doctor. The claimant did this and obtained a medical excuse for his final absence. The Iowa Court of Appeals has ruled that a late call to an employment can be justified if the person was physically unable to call the employer until the person's condition had sufficiently improved. Gimbel v. Employment Appeal Board, 489 N.W.2d 36 (Iowa Ct. Appeals 1992). I conclude that this precedent applies to this case, since the oversleeping had some medical origin.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated June 19, 2012, reference 01, is reversed. 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/kjw