

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM L STEVA
Claimant

APPEAL NO. 13A-UI-12902-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIMBERLINE MANUFACTURING COMPANY
Employer

**OC: 10/20/13
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3 – 7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 13, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on December 10, 2013. The claimant failed to respond to the hearing notice and did not participate in the hearing. Enclosed with the file is a copy of the C2t hearing control sheet, which shows that the claimant did not call the Appeals Bureau prior to the hearing. The employer participated by Jennifer Lawrence, human resources manager; Greg Dick, production manager; and Amber Klenk, team leader. The record consists of the testimony of Greg Dick; the testimony of Jennifer Lawrence; the testimony of Amber Klenk; and Employer's Exhibits 1-8.

ISSUES:

Whether the claimant was discharged for misconduct; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:
The employer is a contract manufacturer of wiring harnesses and control panels. The claimant was hired on October 24, 2011. He was a full-time wire harness assembler. His last day of work was October 24, 2013. He was terminated on October 24, 2013.

The claimant's attendance record shows the following:

October 22, 2013	No call/no show
October 21, 2013	Sick child
July 26, 2013	Absent
July 25, 2013	Absent for half a day
July 16, 2013	Tardy
June 11, 2013	Absent

April 11, 2013	Absent
February 23, 2013	Absent
February 6, 2013	Absent

The claimant received written warnings on attendance on April 10, 2012, and July 30, 2013.

The claimant has not filed for any weekly benefits and has not been paid any weekly benefits since he established his claim on October 20, 2013. The employer participated in the fact-finding interview.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

See Higgins, supra, and 871 IAC 24.32(7) In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The testimony from the witnesses established that the claimant had excessive unexcused absenteeism. The claimant's final absence was a no call/no show. He had called in Monday October 21, 2013, saying he had to take his son to the doctor. The claimant's wife, who also worked for the employer, also took the day off. The situation with the child was not an emergency. The claimant admitted that he also used the day off to do personal errands, such as applying for assistance at DHS. The claimant did not participate in the hearing and the reasons for his absence are unknown. The claimant knew his job was in jeopardy because he had received warnings about attendance. Since the employer has established excessive unexcused absenteeism, benefits are denied.

The claimant has not submitted any weekly claims for unemployment insurance benefits. At the present time, there is no overpayment.

DECISION:

The decision of the representative dated November 13, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wage for insured work equal to ten time claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs