

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES GHEGAN**  
Claimant

**APPEAL NO: 06A-UI-09177-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KONKEL FOREST PRODUCTS INC**  
Employer

**OC: 08-13-06 R: 04**  
**Claimant: Respondent (1)**

Section 96 5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 6, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 27, 2006. The claimant participated in the hearing. Ron Konkell, Vice-President, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time lumber piler/resaw operator for Konkell Forest Products from April 14, 2003 to August 18, 2006. His supervisor spoke to him on several occasions about his attendance and then asked Vice-President Ron Konkell to talk to him. On August 2, 2006, the claimant was two hours late and Mr. Konkell told him if his absenteeism continued the employer would have to let him go. On August 14, 2006, the claimant called and said he would not be in because of illness; and on August 15, 2006, the employer terminated his employment. The claimant was absent May 25, 2006; left 30 minutes early June 6, 2006; left 45 minutes early June 12, 2006; left ten minutes early June 13, 2006; was absent June 15, 2006; left 15 minutes early June 21 and 22, 2006; was absent June 26, July 10 and July 11, 2006; left 90 minutes early July 13, 2006; left five minutes early July 17, 2006; was a no-call no-show July 24, 2006; left 15 minutes early August 1, 2006; and left 10 minutes early August 3, 2006. The claimant's attendance was good until approximately the end of May 2005 when he took a part-time job. He testified he always asked if he could leave early and did not leave the clean-up duties for other employees.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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). While the claimant left early on nine occasions between June 6 and August 3, 2006, he credibly testified he asked permission to leave each time and helped clean up before he left. Additionally, his last absence was due to properly reported illness. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct

since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The September 6, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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