

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK J HOWARD
Claimant

APPEAL NO. 11A-UI-04921-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE PRINTER INC
Employer

OC: 05/09/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Patrick Howard, filed an appeal from a decision dated March 29, 2011, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 12, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer, The Printer, participated by Senior Human Resources Manager Janet Stice and Third Shift Plant Manager Phillip Tolson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Patrick Howard was employed by The Printer from December 5, 2010 until January 17, 2011 as a full-time press operator working 11:00 p.m. until 7:00 a.m. During the course of his employment he had been scheduled to work 240 hours but worked only 105 hours. He had been given verbal warnings from human resources personnel as well as his supervisor, Phillip Tolson. The warnings did advise him his job was in jeopardy as a result of his absenteeism.

Mr. Howard had asserted his absences were due to illness but he never provided a note from any doctor about his medical conditions. A doctor's note would have excused the absence. The final incident of absenteeism was for the shift which was to begin at 11:00 p.m. on January 16, 2011, and he was no-call/no-show for his shift. The next day Senior Human Resources Manager Janet Stice notified him by phone he was fired.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised his job was in jeopardy as a result of his excessive absenteeism. He failed to provide medical documentation for his absences which would have excused the time off. The final incident was a no-call/no-show to work. Even if that final absence was due to illness, it was not properly reported and therefore cannot be considered excused. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The claimant is disqualified.

DECISION:

The representative's decision of March 29, 2011, reference 03, is affirmed. Patrick Howard is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs