

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB T GINTER**  
Claimant

**APPEAL NO. 17AA-UI-03901-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A Y MC DONALD MFG CO**  
Employer

**OC: 03/19/2017  
Claimant: Appellant (4)**

Section 96.2a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated April 5, 2017, reference 01, was denied unemployment insurance benefits finding that the claimant voluntarily quit work on January 27, 2017 after failing to return to work for three days in a row and by not notifying the employer of the reason. After due notice was issued, a hearing was held by telephone on May 3, 2017. Claimant participated. The employer participated by Ms. Jackie Bettcher, Human Resource Representative and Mr. Chad Huntington, Vice President of Human Resources.

**ISSUE:**

Whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: Jacob Ginter began his employment with A Y McDonald Mfg. Co. on November 19, 2012. Mr. Ginter was most recently employed as a full-time utility worker for the company working the first shift and was paid by the hour. The claimant's job separation was initiated by the A Y McDonald Mfg. Co. effective January 27, 2017 after Mr. Ginter had failed to report for scheduled work on January 23, 24 and 25th, 2017 without properly notifying the employer of his impending absences or having vacation time authorized for those dates in advance as required by company policy.

Established company policy requires that employees notify the company's personnel department of impending absences or requests to take vacation time by personally speaking to a Human Resources Department employee during Human Resources Departments regular business hours. Employees who call in to report an absence during other hours are required to subsequently make personal contact with the Human Resource Department to verify that the previous message has been received by the Human Resource Department and the time of work has been authorized. This requirement is part of the bargaining agreement between the company and the Union representing the company's workers.

Mr. Ginter called in and left a voice message during non-working hours that he would not be reporting for his scheduled work on January 22, 2017. The claimant did not contact the Human Resource Department thereafter to verify that the message had been received and that the time away from work was authorized. Mr. Ginter was aware of the notification policy and its requirements. When he left the voice message, Mr. Ginter was on a third level discipline for unacceptable attendance and had been warned that any further infractions could cause his discharge from employment.

Mr. Ginter was incarcerated on January 22nd and left no additional messages for the company to cover his unexpected absences on January 23, 24 or 25, 2017. Mr. Ginter contacted a Union representative and requested the Union representative to act on his behalf in the matter. Company management was not contacted by Mr. Ginter's Union Representative. On January 25, 2017 the company's Vice President of Human Resources initiated contact with Mr. Ginter's Union Representative to see if there was any information about as to why the claimant was not at work.

The company later became generally aware that Mr. Ginter had been incarcerated by information provided by the Union Representative and by the local media. Mr. Ginter had arranged through a third party to contact his Union Representative while Mr. Ginter remained incarcerated. However, Mr. Ginter did not use the same method to provide a daily notification to the employer of each day's absence although he knew the notification was required and his employment was in jeopardy.

The company considered the claimants failure to provide the required notification and the fact that the claimant was on the third level of discipline for attendance violations, and the claimant had been warned that further violations would result in discharge. Company policy provides for discharge under the bargaining agreement for employees who have additional attendance violations after reaching the third level of discipline for attendance. Mr. Ginter was then terminated.

It is Mr. Ginter's position that the employer should have known why he was not at work and the statements from his Union Representative were sufficient to provide notification to the employer. Although Mr. Ginter was discharged there had been no grievances filed by the Union on Mr. Ginter's behalf.

#### **REASONING AND CONCLUSIONS OF LAW:**

It is the claimant's position that he had not voluntarily quit his employment with the A Y McDonald Mfg. Co. but was discharged by the employer.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In this case, the job separation was initiated by the employer after Mr. Ginter had failed to follow the required procedure to notify the employer of impending absences and/or to request vacation time for impending absences. The claimant was aware that company policy required him to personally speak with a Human Resources Representative to report impending absence or to request vacation time. He was also aware that if he left a voice message during hours that the Human Resource was not open policy required him to personally verify with a Human Resource Department employee during working hours that the request had been received and approved.

Mr. Ginter was discharged after he had not followed the procedure to notify the employer of the impending absences for January 23, 24, or 25, 2017 during this time he was incarcerated. Although Mr. Ginter had devised a method of transferring a call from jail to the Human Resource Department through a third party, but he did not use this method to inform the employer of his impending absences as required by the agreement between the company and the Union. The claimant was at the time of most recent infractions on the third level of discipline for excessive absenteeism, and his further infractions resulted in his discharge from employment. Although Mr. Ginter maintains that his Union was acting in his behalf throughout the days in question, the administrative law judge notes that there has been no grievance filed on behalf of the claimant by the Union following his discharge.

No other aspect of the contract of employment is more important than the employer to expect the employee to appear for work on the hour and day agreed upon. The current failure to follow that obligation or to, in the alternative, provide reasonable and required notification to the employer is evidence to disregard of the employer's interests and reasonably standard of behavior that the employer has a right to expect under the Iowa Employment Security Law.

The administrative law judge concludes that the employer has sustained its burden of proof in establishing disqualifying the conduct on the part of the claimant by a preponderance of the evidence in this matter. Accordingly, the claimant is disqualified for unemployment insurance

benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The decision of the representative dated April 5, 2017, reference 01, is affirmed as modified. The portion of the determination disqualifying the claimant from the receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount is affirmed. The portion of the determination finding that the claimant voluntarily quit employment is modified to find that the claimant discharged under disqualifying condition.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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