

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDOLPH MCDONALD JR
Claimant

APPEAL NO. 10A-UI-07561-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNICATION INSTITUTE INC
Employer

**Original Claim: 04/11/10
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Randolph McDonald Jr., filed an appeal from a decision dated May 14, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 13, 2010. The claimant participated on his own behalf. The employer, Communication Institute, Inc. (CII), notified the Appeals Section in writing prior to the hearing it did not intend to participate.

ISSUE:

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

FINDINGS OF FACT:

Randolph McDonald was employed by CII from June 2006 until November 17, 2009 as a full-time technical director. He had been given a warning in August 2009 about his attendance and was from that point on required to come to the office every morning he worked to inform Manager Sam Loomer he was present.

The claimant requested time off from Mr. Loomer and another manager, Randy. It was a verbal request and both managers approved it. His return to work date was November 17, 2009. When he returned to work that day, the two managers informed him he was discharged for not being at work the day before. Mr. McDonald reminded them his time off was noted on the calendar, but it had been thrown out and was no longer available.

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.

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 was discharged because the employer believed he had violated the terms of his final warning by not coming to work or notifying his manager he was present. The employer was mistaken, because Mr. McDonald had been approved for time off through November 16, 2009. He was not guilty of unexcused absenteeism and disqualification may not be imposed.

DECISION:

The representative's decision of May 14, 2010, reference 01, is reversed. Randolph McDonald is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw