

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WINDLE R HARVEY**  
Claimant

**APPEAL NO. 08A-UI-02457-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GATEHOUSE MEDIA IOWA HOLDINGS INC**  
Employer

**OC: 02/17/08 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 10, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 26, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Tery Lawless participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time for the employer as a newspaper inserter from September 4, 2007 to February 14, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant had nine absences during 2007 due to his own illness and his children's illness. He was warned that he would need to have a doctor's slip if he missed any additional days of work.

On February 18, the claimant was scheduled to work at 8:00 a.m. He had been up pretty much all night with his two-year-old son who kept waking up in the night and would not go to sleep. He laid down at about 6:00 a.m. and fell asleep. He slept through his alarm. When co-workers arrived to pick him up for work, he did not wake up when they honked the car horn outside his residence. One of the co-workers used a cell phone to call the claimant. The claimant answered the phone and said he was not going to go into work that day. The claimant failed to call the employer to notify the employer that he was not going to be at work.

The claimant called his supervisor the next morning to see if he still had a job. He was told that he did not have a job due to his attendance record and his absence without notice on February 18, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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's excessive unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. While the claimant may have had a good reason for not reporting to work, he has not shown a legitimate reason for not calling to let the employer know about his absence on February 18. He willfully violated a work rule by not

calling in to report his absence. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated March 10, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css