

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**STEVE P STRAUCH
139 – 37TH ST NE #S-3
CEDAR RAPIDS IA 52402-6141**

**G2 SECURE STAFF
3625 W ROYAL LN #125
IRVING TX 75063**

**Appeal Number: 06A-UI-07824-CT
OC: 07/09/06 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Steve Strauch filed an appeal from a representative's decision dated July 31, 2006, reference 01, which denied benefits based on his separation from G2 Secure Staff. After due notice was issued, a hearing was held by telephone on August 21, 2006. Mr. Strauch participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Strauch began working for G2 Secure Staff on June 1, 2002. He was employed full time as a security ticket reader at Eastern Iowa Airport.

On July 7, 2006, he was notified that he had to take a security test. He took the test but failed it. He was told that the testing had to be completed before midnight on July 9 in order for him to work on July 10, his next scheduled day. He was notified that the supervisor would be available until 1:30 p.m. on Saturday, July 8, to administer the test. Mr. Strauch did not show up to take the test on July 8 and did not call to let anyone know that he would not be there. It was not a scheduled work day. He did not take the test on July 8 because he did not have gas to travel to the job site and did not have money to purchase gas.

Mr. Strauch did not report for work or contact the employer on July 10. He did not call anyone to determine the status of his job or whether he could still take the test in order to continue employment. He called on July 11 to see if he could take the test and was told he no longer had employment. He had been discharged because of the failure to take the test and because he was absent without notice on July 10.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Strauch was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Strauch was discharged because he failed to take a required test and because he was absent for one day without notice. It was his responsibility to take the testing necessary for his job. He could have taken the test on July 8 but did not. The administrative law judge does not doubt that he was told he had to take the test by midnight on July 9 in order to work on July 10. He was not told he would not be allowed to take the test at a later date. The administrative law judge construes the employer's statement as meaning he had to complete the test before he continued working. In other words, he could not return to work until such time as he passed the test.

Monday, July 10, was a scheduled work day for Mr. Strauch. He may well have been allowed to take the test on July 10 and allowed to return to work on July 11, assuming he passed the test. Mr. Strauch made no effort to determine his status on July 10. If he thought he no longer had a job, one would have to question why he then called on July 11. The administrative law judge appreciates that Mr. Strauch did not have the gas or money to go to the work place on a day he was not scheduled to work. However, July 10 was a scheduled day and it was his responsibility to have gas at least by that date.

Mr. Strauch's failure to take a required test, or make arrangements to do so, and his failure to notify the employer of his intended absence constituted a substantial disregard of the standards the employer had the right to expect. For the above reasons, benefits are denied.

DECISION:

The representative's decision dated July 31, 2006, reference 01, is hereby affirmed. Mr. Strauch was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs