

**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 R REIDEL
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ROWAN IA 50470**

**IOWA MOLD TOOLING CO INC
500 HWY 18 W
PO BOX 189
GARNER IA 50438**

**Appeal Number: 06A-UI-02247-SWT
OC: 01/29/06 R: 01
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 21, 2006, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 14, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Rhonda Kruse participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time as a crane assembly worker for the employer from August 8, 2005 to January 23, 2006. 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 and were subject to discharge when they received 12 attendance points. Employees receive three points for an absence properly reported. The claimant received three

points each for missing work on December 14, 19, and 20. He notified the employer regarding each absence, which was due to a life-threatening medical condition that his fiancée has. The claimant was required to take her for medical treatment. The claimant spoke to the human resources manager and was assured that the employer would work with the claimant.

On January 24, 2006, the claimant was trying to make arrangements for nursing home care for his fiancée. She was no longer covered by insurance. He went into the human services office to apply for Medicaid. He also needed to see the attorney handling his fiancée's claim for social security disability. Later that evening he had an appointment to get his taxes done by his tax preparer. He needed his taxes completed to have the documentation needed for applying for assistance for his fiancée since they lived in the same household. He called his supervisor at the beginning of his shift and explained the situation and asked for a personal day. The claimant believed he had a personal day available after the beginning of the year. The supervisor did not deny the claimant a personal day or inform him that he would be discharged if he did not work that day. The supervisor said that he would talk to the claimant when he came to work the next day.

When the claimant reported to work the next day, his supervisor discharged him because he was assessed another three points for missing work on January 24. The claimant learned that he was not entitled to a personal day.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The first three days the claimant missed were due to legitimate medical reasons involving his fiancée and he notified the employer about his absences. On January 24, the claimant called at the beginning of his shift and requested a personal day off to avoid being discharged for being late for work. His supervisor did not deny the claimant the day off, inform him that he was not entitled to a personal day, or warn him that he would be discharged if he did not report to work. No willful or substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 21, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kkf