

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUMO GBAMONQUILLIE**

Claimant

**APPEAL NO: 12A-UI-12771-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GANNETT PUBLISHING SERVICES LLC**

Employer

**OC: 09-23-12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 17, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 28, 2012. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time press room employee for Gannett Publishing Services from May 2, 2012 to June 30, 2012. On June 29, 2012, the claimant, whose schedule varied wildly, was scheduled to work at 3:00 p.m. His wife was also working and he was taking care of his five-year-old stepdaughter. He contacted the employer and notified it he was unable to come in at 3:00 p.m. because his wife was working until 8:00 p.m. and he did not have any other childcare options. He stated he would be in as soon as his wife returned from work. When he went in shortly after 8:00 p.m. his name had been crossed off the schedule and he was told his employment was terminated because he was a no-call/no-show. The claimant disputed that accusation, stating he called in to report he could not come in until his wife returned home from work, but the employer did not acknowledge his call. The claimant did not have any previous incidents of tardiness or absenteeism and had not received any verbal or written warnings about his attendance.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant had one unexcused absence during his tenure with the employer and was terminated as a result. His attendance was perfect with the exception of the final incident when he called the employer to state he could not come in until his wife was off work and could care for his five-year-old step-daughter because he could not leave her alone and could not find anyone else to care for the child. Additionally, the claimant had not received any verbal or written warnings about his attendance.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

**DECISION:**

The October 17, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css