

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY L GRAHAM
Claimant

APPEAL NO. 13A-UI-06322-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL-STATE INDUSTRIAL RUBBER CO INC
Employer

OC: 04/28/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 16, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was held on July 3, 2013. The claimant participated personally. The employer participated by Kara Blazek, the payroll and human resources manager. The record consists of the testimony of Kara Blazek and the testimony of Jeffrey Graham.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures industrial products at its facility located in West Des Moines, Iowa. The claimant was hired on April 25, 2011, as a full time production worker. His last day of actual work was April 18, 2013. He was terminated on April 29, 2013.

The incidents that led to the claimant's termination occurred on April 25, 2013, and April 26, 2013. The claimant was a no-call/no-show on both days. The claimant did not call because he did not have a phone. The claimant had been suspended for on February 5, 2013, and February 6, 2013, due to attendance problems and knew his job was in jeopardy.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7) In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The final two absences were no call/no show. This is important because absence due to illness, which is what the claimant says was the reason for his absence, is considered excused only if the claimant properly notifies the employer. The claimant did not call his employer as he was required to do. The employer has shown excessive unexcused absenteeism. Benefits are denied.

DECISION:

The decision of the representative dated May 16, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

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