

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLENDEL CLARK
Claimant

APPEAL NO. 07A-UI-05324-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**USA STAFFING INC
LABOR WORLD OF IOWA**
Employer

**OC: 04/22/07 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Labor World, filed an appeal from a decision dated May 17, 2007, reference 02. The decision allowed benefits to the claimant, Glendel Clark. After due notice was issued a hearing was held by telephone conference call on June 8, 2007. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Branch Manager Doug Conrad.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Glendel Clark was employed by Labor World from November 27, 2006 until April 25, 2007, at Fort Dodge Ice and Cold on a long term assignment. One week before the separation the claimant was counseled by Branch Manager Doug Conrad about his attendance. That week he had worked only 11.2 hours out of 40 scheduled and he was told his job was in jeopardy. The claimant merely stated that he had "had things to do" that week. The next week a representative of Fort Dodge Ice and Cold called Mr. Conrad and said the claimant had only worked 11.6 hours out of 24 and he was to be removed. The employer called the claimant and told him he was fired. Mr. Clark did not offer any explanation or extenuating circumstances to explain his absences.

Glendel Clark filed a claim for unemployment benefits with an effective date of April 22, 2007. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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.

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 claimant had been advised his job was in jeopardy as a result of his absenteeism. Instead of improving his attendance, it became worse and he was discharged for missing over half of his scheduled hours the next week without explanation. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of May 17, 2007, reference 02, is reversed. Glendel Clark is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs