

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC S JOE**  
Claimant

**APPEAL NO: 14A-UI-04567-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHILDSERVE HOMES INC**  
Employer

**OC: 04/06/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Eric S. Joe (claimant) appealed a representative's April 29, 2014 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Childserve Homes, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2014. The claimant participated in the hearing. Alyssa Ciarimboli appeared on the employer's behalf and presented testimony from one other witness, Lynnette Fisher. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 6, 2013. He worked full time as a resident assistant. His last day of work was February 2, 2014. The employer discharged him on February 7, 2014. The reason asserted for the discharge was excessive absenteeism.

The claimant had missed some days of work in December, one day due to illness, another day due to being out of town on personal business. He was given a coaching for attendance on January 16, 2014.

The claimant was then a no-call/no-show for work on January 28 and January 29. He had a dispute with a coworker on January 26 because he felt that coworker had intentionally not assisted him when he sought assistance that day. He did not wish to work with that coworker any further, and the employer had arranged the schedule so that the claimant need not work with that coworker on January 28 and January 29, yet the claimant did not report for work. The employer then scheduled a meeting with the claimant to discuss the situation with the coworker as well as the claimant's absences; the meeting was first set for February 4, and when the claimant did not report for that meeting, it was rescheduled for February 5. The claimant again did not call or report for the meeting on February 5. The employer then determined to discharge the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. Rule 871 IAC 24.32(7). The claimant's final absences were not excused and were not due to properly reported illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's April 29, 2014 (reference 01) decision is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 7, 2014. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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