

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER R CAMPBELL
Claimant

APPEAL NO. 10A-UI-02761-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHWEST BUILDER SUPPLY INC
Employer

OC: 01/10/10
Claimant: Appellant (1)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 11, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 31, 2010. Employer participated by Debbie Murphy, owner; Joe Murphy, owner; Rick Fox, manager; and Austin Adams, co-worker. Although the claimant responded to the hearing notice and provided a telephone number at which he could be reached, when that number was dialed by the administrative law judge, voice mail picked up. A detailed message was left for the claimant to call and participate in the hearing. The claimant did not call in prior to the end of the hearing. The record consists of the testimony of Debbie Murphy; the testimony of Joe Murphy; the testimony of Rick Fox; and the testimony of Austin Adams.

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 is a lumber yard and homebuilding/hardware supply center. The claimant was hired on July 13, 2009, as a yard man. The claimant's last day of work was December 17, 2009. He was terminated on December 18, 2009.

The incident that led to the claimant's termination occurred on December 17, 2009. The claimant called in after his shift had started to say that he would not be coming into work that day. His reason for not coming into work was that he could not come in because his hunting buddies were coming. Prior to December 17, 2009, the claimant had ten unexcused absences and had been tardy approximately 75% of his work days. The claimant had been repeatedly warned about his tardiness.

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. The employer has the burden of proof to show misconduct.

The evidence in this case established excessive unexcused absenteeism. The claimant had ten unexcused absences and was tardy approximately 75% of the time. On December 17, 2009, the claimant called in after the start of his shift to say that he would not be in because his hunting buddies were coming. The claimant's conduct shows that he did not take seriously his obligation to the employer to come to work when scheduled and to properly notify the employer of any absences. He deliberately violated his employer's interest in having its employees come to work and to come to work on time. Benefits are denied.

DECISION:

The decision of the representative dated February 11, 2010, reference 02, 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

vls/pjs