

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS A THIESEN
Claimant

APPEAL NO. 09A-UI-05202-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SMURFIT-STONE CONTAINER
ENTERPRISES INC**
Employer

OC: 02/08/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated March 20, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 29, 2009. The claimant participated personally. Participating as a witness for the claimant was Mr. Richard Kriss, a fellow employee. The employer participated by Julie Keane, Human Resource Representative and Mark Welch, Plant Superintendent. Employer's Exhibits One, Two and Three were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered all of the evidence in the record, finds: The claimant worked for this employer as a full-time maintenance mechanic from October 22, 2008 until February 6, 2009 when he was discharged from employment. The claimant was paid by the hour. His immediate supervisor was Mr. Russ Vander Schaaf.

The claimant was discharged when the company believed that Mr. Thiesen had been scheduled to work on February 5, 2009 but had not reported or provided notification to the employer as required by company policy. The company uses a "no-fault" attendance policy which requires that employees be discharged if they accumulate nine or more attendance infraction points during a specified period of time. Employees receive four infraction points if they fail to report or provide notification to the company.

Mr. Thiesen had been transferred to the company's night shift approximately two to three weeks before his discharge. The claimant's established schedule placed Mr. Thiesen off work on Thursdays and Fridays each week. On Thursday, February 5, 2009 Mr. Thiesen did not

perform normal duties as a maintenance mechanic but attended CPR training and boiler training, required subjects for maintenance employees. The claimant had checked the company's schedule that had been posted in the company's maintenance department and noted that he had not been scheduled to perform work as a maintenance mechanic on either February 5 or February 6, 2009.

Upon being notified by a telephone message on February 6, 2009 that he had been suspended for failing to report or provide notification to the company, Mr. Thiesen attempted to contact his supervisor and company management to determine the basis for the suspension from employment. The claimant received no information from the employer. Mr. Thiesen then contacted Richard Kriss who was also employed as a maintenance mechanic. Mr. Kriss at that time specifically checked the maintenance calendar in the maintenance department and specifically determined that the claimant had not, in fact, been scheduled to work either February 5 or February 6. This information was relayed to Mr. Thiesen and it corroborated the claimant's belief that he had not been scheduled to work and thus had no obligation to phone in to report and impending absence.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record is sufficient to establish intentional disqualifying misconduct on the part of this claimant. It does not.

The evidence in the record establishes that the claimant had not been regularly scheduled to work on Thursdays or Fridays after assuming the position of maintenance mechanic on the company's night shift. The evidence further establishes that the claimant had checked his schedule and found that he had not been scheduled on February 5 or February 6, 2009. On February 5 the claimant voluntarily attended training that was required for employees, taking the opportunity to attend the training on a day that he was not regularly scheduled to perform his work duties. Upon being informed of his suspension for failure to report to work or provide notification, the claimant followed a reasonable course of action by contacting another worker who was present at the worksite on February 6, 2009. Mr. Kriss checked the company's schedule in the maintenance department and specifically determined that the claimant had not in fact been scheduled to work either February 5 or February 6, 2009. Mr. Kriss made a copy of the work schedule and placed it in Mr. Thiesen's locker, however, a copy of the schedule was subsequently removed for unknown reasons.

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 administrative law judge concludes based upon the evidence in the record that intentional disqualifying conduct on the part of this claimant has not been established. The claimant reasonably believed that he had not been scheduled to work on February 5 or February 6, 2009 and therefore did not report and had no obligation to provide notice to the employer that he would not be reporting on a non-scheduled workday. It is also noted that the evidence in the record establishes that the claimant's immediate supervisor had a practice of personally contacting employees who did not report on scheduled workdays. The evidence establishes that Mr. Vander Schaaf made no known attempt to contact the claimant as was his usual practice. The administrative law judge thus concludes that the claimant was discharged for no disqualifying reasons. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 20, 2009, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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