

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE W HEATH
Claimant

APPEAL NO. 10A-UI-11142-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILTON PRECISION STEEL
Employer

OC: 07/11/10
Claimant: Respondent (1)

Section 96.5-2-a – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 4, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 23, 2010. Claimant participated. Employer participated by Dennis Hanser, owner; Greg Gonzalez, human resources manager; and Ken Humphries, foreman. The record consists of the testimony of Greg Gonzalez; the testimony of Ken Humphries; the testimony of Dennis Hanser; the testimony of Lawrence Heath; Claimant's Exhibit A; and Employer's Exhibits 1-5.

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 cold drawn steel manufacturing facility located in Wilton, Iowa. The claimant was hired on January 18, 1999. His last day of work was July 9, 2010. He was terminated on July 13, 2010, for exceeding allowable attendance points.

On July 9, 2010, the claimant informed his foreman, Ken Humphries, that he was not going to be at work on July 12, 2010, because he had a doctor's appointment. Mr. Humphries said "okay." The claimant returned to work on July 13, 2010. The claimant was terminated because he did not provide a doctor's excuse for July 12, 2010. If he had produced a doctor's excuse, his absence would have been considered excused, and he would not have exceeded his attendance points. The claimant does not recall being asked for a doctor's excuse on July 13, 2010.

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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. 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) Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (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). The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant's final absence was due to illness and was properly reported to the employer. Even though the claimant did have excessive absenteeism, he cannot be disqualified from receiving benefits unless the final absence was unexcused as that term is defined in unemployment insurance law. Iowa law states that if an individual is absent due to illness and properly notified the employer, the absence is excused. There is, therefore, no final act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 4, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs