

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK D PFALZGRAF**  
Claimant

**APPEAL NO. 13A-UI-00867-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**  
Employer

**OC: 11/11/12  
Claimant: Appellant (1)**

Section 96.5(1)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Mark Pfalzgraf, filed an appeal from a decision dated January 16, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 10, 2013 and concluded on May 2, 2013. The claimant participated on his own behalf. The employer, O'Reilly Automotive, participated by Store Manager Candis Rogers. Exhibits One, Two and A were admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Mark Pfalzgraf was employed by O'Reilly Automotive from June 18 until October 20, 2012 as a part-time parts specialist. He was scheduled to work October 15, 16, 17, 18, and 19, 2012. He called in absent on October 15, 2012, and was no-call/no-show to work after that.

He was not scheduled on October 20, 2012, but called and spoke with Store Manager Candis Rogers. She told him he had been discharged for job abandonment, the four days of no-call/no-show to work. Ms. Rogers told him if he had any questions to contact Shireka McCullough at the corporate human resources office.

Mr. Pfalzgraf maintained he had doctor's notes but he never presented them to the employer because he had come into the store on Friday, October 19, 2012, and talked with Assistant Manager Sam Debord who told him he was fired, but Mr. Debord did not work on that day. The claimant maintained he had been hospitalized during the four days of his absences but the documents he submitted for the hearing show only that tests were run on October 15 and 19, 2012, and not that he was admitted to the hospital on a continuous basis during that time.

## 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.

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 was absent for four days without calling in to report his absences. Even if the absences were due to illness he did not properly report them which means they were unexcused. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). He has not been able to provide documentation to support his contention he was hospitalized continuously for that period, only that one test was run October 15 and he was charged for an ambulance service on October 19, 2012.

He has not met his burden of proof to establish he was in the hospital and had no way to contact the employer to explain his situation. His assertion he contacted the assistant manager on October 19, 2012, is not credible as that person was not scheduled to work that day.

The record does establish the claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

**DECISION:**

The representative's decision of January 16, 2013, reference 01, is affirmed. Mark Pfalzgraf is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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