

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RANDALL R HUTE
1605 SWEETLAND RD
MUSCATINE IA 52761-9735**

**THE HON COMPANY
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PO BOX 1109
MUSCATINE IA 52761**

**Appeal Number: 06A-UI-06537-H2T
OC: 05-21-06 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 12, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 9, 2006. The claimant did participate along with his witness Ted Werinmont, LISW. The employer did participate through Member and Human Resources Generalist Marti Stumpf. The record was kept open for the claimant to obtain and submit medical records from his physician. The claimant was given until August 18 to submit the records and the employer was given until August 23 to file any objections to the exhibits. No objections were received from the employer and Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a tool and dye maintenance worker full-time beginning September 7, 2004 through May 22, 2006 when he was discharged. The claimant was discharged for failure to complete and produce paperwork that would justify his medical leave of absence. The claimant repeatedly contacted his treating physician, William C. Gremmels, D.C., and was assured by Dr. Gremmels' office that the paperwork for his FMLA had been sent to the employer. The claimant has obtained and submitted copies of the paperwork completed by Dr. Gremmels. Additionally, Mr. Werinmont testified that the claimant was receiving treatment at the University of Iowa Back Clinic from May 8 through May 19 and was unable to work during that time period as his treatment was all day long, every day.

The claimant is not currently receiving any workers' compensation benefits nor has he filed a petition for workers' compensation benefits. Mr. Werinmont attempted to call John Taylor at HON to discuss the claimant's situation and his inability to work, but Mr. Taylor was not available and did not return the phone calls. The claimant and his representatives attempted to communicate with the employer but the employer through at least Mr. Taylor did not cooperate by returning phone calls. The claimant has been released to return to work, albeit it with some lifting restrictions. The claimant believes he is presently able to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The claimant attempted to have his treating physician complete the required forms. While the doctor may have been tardy, that was completely out of the claimant's control. The claimant did try to contact the employer through his representatives but was unable to reach them and they would not return his phone calls. Under these circumstances, the administrative law judge cannot conclude that the claimant failed to communicate with the employer or failed to provide the needed documentation to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 12, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/cs