

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL T GOLDSTONE
Claimant

APPEAL NO: 10A-UI-12494-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACI MECHANICAL INC
Employer

**OC: 08/01/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 2, 2010, reference 01, that held he was discharged for misconduct on August 4, 2010, and benefits are denied. A telephone hearing was held on October 26, 2010. The claimant did not participate. Laura Ring, HR Manager, and Larry Muller, Production Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on March 4, 2008, and last worked for the employer on August 4, 2010. The claimant received an employee handbook that contained the policies of the employer that contains a provision for attendance guidelines. The claimant is instructed how to personally report an absence to named individuals with phone numbers provided. The attendance policy explains what is considered absenteeism and how employees are subject to corrective action up to and including termination. The employer policy also explains that employees are to use only machines and equipment that are assigned to and authorized to use.

The claimant received five written warnings involving attendance (two), skid loader operation (two), and inappropriate behavior issues during a period from September 22, 2009 to May 18, 2010. The last warning on May 18 put the claimant on notice that any further policy violation could lead to termination.

The employer discharged the claimant on August 4, 2010 when he failed to timely report to work on August 3. The employer had been transporting employees in a company van to a job site for

several weeks. The claimant and other employees know the van leaves at 6:00am. The claimant missed the van by ten minutes due to oversleeping.

The claimant was not available at the telephone number he provided for the hearing.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on August 4, 2010, for repeated violations of company policy.

The claimant received the employer policy and due to five prior warnings, he was put on notice that a further violation could lead to termination. Two of the prior warnings were due to

attendance issues. The claimant was late to work on August 3 for a non-excusable reason that made it a misconduct issue and job disqualifying misconduct in light of the prior warnings.

DECISION:

The department decision dated September 2, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on August 4, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs