

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA D HEATHER
Claimant

APPEAL NO. 12A-UI-12863-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTERN IOWA COOPERATIVE
Employer

OC: 09/30/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Joshua Heather, filed an appeal from a decision dated October 17, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 28, 2012. The claimant participated on his own behalf. The employer, Western Iowa Cooperative (WIC), participated by Location Manager Mike Friss.

ISSUE:

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

FINDINGS OF FACT:

Joshua Heather was employed by WIC from January 12, 2010 until October 1, 2012 as a full-time grain handler. The employer attempts to accommodate its employees to attend school functions for their children, but during the harvest season, the busiest of the year, everyone is expected to work as many hours as needed and to work extra hours if they leave early.

Mr. Heather had put on the calendar he wanted Friday, September 28, 2012, off. Location Manager Mike Friss spoke with him on September 25, 2012, and said he could not have that day off because he had already been leaving early for several days. Mr. Friss told him he would be expected to work until at least mid-afternoon on Friday and only then would the employer be able to say if he could leave before the 6:30 p.m. quitting time. He was told he could go to his son's football game on Saturday, September 29, 2012, but was expected to call in afterward to see if he was needed that afternoon.

The claimant left early on September 21, 24, 26 and 27, 2012. He was no-call/no-show on September 28 and 29, 2012. On October 1, 2012, Mr. Friss discharged the claimant for his refusal to work his share of the hours.

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.

The claimant maintains his request to have Friday, September 28, 2012, off was not officially denied. He acknowledged at the least Mr. Friss said he would "let him know" but made no effort whatsoever to check with his manager before simply not showing up to work on Friday or calling in on Saturday.

The claimant was aware that the work load was very heavy during the harvest season and he had put a share of his work onto other employees by leaving early for football games. There is no reason why he should expect to have additional time off after the accommodations the employer had already made for him.

The claimant was discharged for failing to appear for work or follow the instructions of his manager. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of October 17, 2012, reference 01, is affirmed. Joshua Heather is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css