

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRAD W STEVENS**

Claimant

**APPEAL NO. 07A-UI-05625-H**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURKE MARKETING CORPORATION**

Employer

**OC: 05/06/07 R: 02  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Brad Stevens filed an appeal from a decision dated May 25, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on July 11, 2007. The claimant participated on his own behalf. The employer, Burke Marketing Corporation, was paged in the main waiting area at 8:29 a.m. No one responded and the employer did not participate.

**ISSUE:**

Whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Brad Stevens was employed by Burke Marketing from October 17, 2005, until May 5, 2007. He was a full-time grinder operator, working 4:00 p.m. until 2:00 a.m., four days per week. Mr. Stevens had a medical problem with his arm, which was attributable to a work-related condition. His doctor released him to return to work and the last restrictions were posted on February 28, 2007, saying he was able for full duty with no specific restrictions but to “get help when needed.”

On May 3, 2007, Heather Woods was acting supervisor because the claimant's regular supervisor, Dave Mull, was absent. Mr. Stevens had requested assistance in his area and Ms. Woods assigned a Mr. Stubblefield. About 6:30 p.m., the claimant asked Ms. Woods if instead of Mr. Stubblefield, a Matt Blink could be assigned, because he was a better worker. Mr. Stubblefield was creating more work by tripping breakers and not doing the job. It was causing a lot of extra heavy work for the claimant and his arm was giving him a great deal of pain. He could not take the prescribed pain medication, as it specifically should not be taken before or during work periods. Ms. Woods refused to assign Mr. Blink and told the claimant he would have to “deal with it.” At that time, Mr. Stevens said his arm was hurting too bad and that he would have to go home, and Ms. Woods merely told him to “punch out.”

Over the weekend, the claimant heard rumors from a relative that he was going to be discharged; and so on May 7 he contacted Mr. Moll to find out what the situation was. Mr. Mull consulted with Plant Manager Hunter Bershears and later told the claimant that he was being fired because "Hunter has had enough."

### **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 employer has the burden of proof to establish the claimant was discharged for substantial job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In this case, the employer did not participate and did not provide any evidence of misconduct on behalf of the claimant. The claimant was under restrictions from his doctor and he did report to his supervisor that his arm hurt too bad and he had to go home. Ms. Woods did not reprimand him or deny permission, merely told him to punch out before he left. Under these circumstances, the claimant must be considered to have had permission to leave and therefore there was no final incident of misconduct which precipitated the decision. Disqualification may not be imposed.

**DECISION:**

The representative's decision of May 25, 2007, reference 01, is reversed. Brad Stevens is qualified for benefits, 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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