

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

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EAGLE WINDOW & DOOR INC
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Appeal Number: 04A-UI-08536-SWT
OC: 07/18/04 R: 04
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 6, 2004, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 26, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Turner participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time as a laborer from January 19, 2004 to July 15, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after receiving nine occurrences. Employees receive occurrences for unscheduled absences and tardiness.

The claimant received his first occurrence on January 22 after notifying the employer that he was going to be absent due to a twisted ankle. He received his second occurrence for calling in sick on March 1. He received his third occurrence on May 13 after calling in stating he was having back problems. He received his fourth occurrence on May 17 when he reported to work with medical restrictions and was sent home by the employer. He received his fifth occurrence when he reported to work 1½ hours late on June 19. He received his sixth occurrence on June 24 after he left work early due to a court appearance, and received his seventh occurrence after he missed work on June 28 due to a court appearance. The claimant received written warnings on June 1 and July 6 for excessive absenteeism.

On July 16, the claimant called in and stated that he would not be at work because his back was bothering him. The employer attempted to call the claimant to let him know that he had reached eight points, but the employer did not have the correct phone number on file for the claimant. The claimant was absent from work on July 17 and 19 without any notice to the employer. On June 19, the human resources representative found the claimant's phone number in the nurse's records and called him. The claimant explained that he had stayed home with his wife and newborn child and figured that he was done after missing work on June 16. The human resources representative instructed the claimant to come in to the plant. When he reported to the plant, the claimant's supervisor informed him that he was terminated due to excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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, (7) provide:

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).

(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's excessive absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The final absences were unreported and were not for excused reasons. The prior absences for illness would be excused but not his reporting to work late or for his court appearances. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 6, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/b