

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN T MARION**  
Claimant

**APPEAL NO. 13A-UI-05968-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINNEBAGO INDUSTRIES**  
Employer

**OC: 07/01/12  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Steven Marion, filed an appeal from a decision dated May 7, 2013, reference 04. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 26, 2013. The claimant participated on his own behalf. The employer, Winnebago, participated by Personnel Supervisor Gary McCarthy and Production Supervisor Scott Smith. Exhibits A and One were admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Steven Marion was employed by Winnebago from July 16, 2012 until April 18, 2013 as a full-time assembler. He received three disciplinary actions on January 22, 2013, for absenteeism. The company policy requires employees to provide documentation from a physician or other health care provider for any absence due to illness. Mr. Marion had provided documentation for some absences but not all. The warnings advised him his job was in jeopardy as a result of his attendance and would result in discharge if it did not improve.

On April 15, 2013, the claimant reported to work and asked Production Supervisor Scott Smith for a day of vacation. He mentioned he had to try and make an appointment to a dentist and also was having plumbing problems at his home. Mr. Smith initially refused because he had previously approved two other employees for vacation that day. Eventually he allowed Mr. Marion to be gone for the morning but he had to return in the afternoon. The claimant agreed to return in the afternoon.

Mr. Marion was no-call/no-show to work for the remainder of the day. He maintained he did not have the phone number for Mr. Smith but did not explain why he simply look up the phone number of Winnebago in the phone book and asked to be put through to Mr. Smith.

The claimant was also absent April 16 and 17, 2013, because it took him that long to secure the dental treatment. Those absences were not considered in the decision to discharge because his no-call/no-show the afternoon of April 15, 2013, was the final incident for the employer.

Steve Marion filed an appeal with an effective date of May 16, 2013. He did not submit his request for a subpoena duces tecum until June 17, 2013. The employer provided the information to the claimant as requested. Mr. Marion did not read the information on the subpoena which required him to submit to the Appeals Section those documents he wished to have considered as exhibits.

Mr. Marion mailed exhibits to the Appeals Section June 26, 2013, the day before the hearing. These had not arrived by the time the hearing began on June 27, 2013. The employer did send copies of the doctor's excuses provided by the claimant during his employment.

### **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 claimant had been advised his job was in jeopardy as a result of his absenteeism. He had missed many days unexcused by doctor's statements. Some of the "excuses" simply stated things like "patient requests time off" and "referred to joint specialist," without anything regarding dates to be excused.

The final occurrence was a no-call/no-show to work for the afternoon of April 15, 2013. The employer granted him the morning off for vacation in spite of the shortage in staff it created and the short notice of the request. Mr. Marion did not provide any reasonable explanation for his failure to notify his supervisor he would not be in for the second half of his shift as promised. It does not appear he made a diligent and good-faith effort to do so.

The record establishes the claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

The administrative law judge cannot admit documents into the record which were not provided in time for the hearing as instructed on the notice of hearing and the subpoena duces tecum.

**DECISION:**

The representative's decision of May 7, 2013, reference 04, is affirmed. Steve Marion is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css