

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN E PROUGH

Claimant

APPEAL NO. 13A-UI-03241-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC

Employer

OC: 02/03/13

Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Pilot Travel Centers LLC (Pilot), filed an appeal from a decision dated March 11, 2013, reference 02. The decision allowed benefits to the claimant, Brian Prough. After due notice was issued, a hearing was held by telephone conference call on April 16, 2013. The claimant participated on his own behalf. The employer participated by General Manager Greg Surgeon.

ISSUE:

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

FINDINGS OF FACT:

Brian Prough was employed by Pilot from August 16, 2012 until January 22, 2013 as a full-time co-manager. His last day of work was Sunday, January 20, 2013 and he believed he was not scheduled again until Tuesday, January 22, 2013. He either misread the schedule or misunderstood it but he was discharged by General Manager Greg Spurgeon on January 22, 2013, for being no-call/no-show to work the day before. This was the sole reason for the discharge as the company policy is that one no-call/no-show is grounds for discharge. The claimant had not received any other warnings regarding attendance or work performance.

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 was discharged for missing one day of work. While this may constitute grounds for discharge under the company policy, the unemployment law is not bound by the policies of an individual employer. One incident of being absent from work is not excessive. In order to be disqualified from receiving unemployment benefits the absenteeism must be excessive and unexcused. One incident does not rise to this level and disqualification may not be imposed.

DECISION:

The representative's decision of March 11, 2013, reference 02, is affirmed. Brian Prough is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css