

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICKY L ENMON Claimant REMEDY INTELLIGENT STAFFING INC Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO. 14A-UI-05054-NT ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 04/20/14 Claimant: Appellant (1)</div>
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Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ricky Enmon filed a timely appeal from a representative's decision dated May 12, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 4, 2014. The claimant participated. Participating as a witness for the employer was Ms. Rachael Weatherly, Recruiter.

ISSUE:

The issue in this matter is whether the claimant was discharged for conduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Ricky Enmon was last employed by Remedy Intelligent Staffing from March 7, 2014 until April 14, 2014 when he was discharged from employment. Mr. Enmon was assigned by Remedy Intelligent Staffing to work as a laborer at Helena Industries and was paid by the hour.

Mr. Enmon was discharged on April 14, 2014 when he failed to report to work that day and did not provide any notice of his absence to either Remedy Intelligent Staffing or to the client employer as required by company policy. Company policy requires that an employee notify both Remedy Intelligent Staffing and the client employer if the employee is unable to report for scheduled work. The notice must be provided at least two hours prior to the beginning of the work shift.

On April 14, 2014, Mr. Enmon had received permission to begin his work at Helena Industries later in the morning because he had been scheduled to attend an interview for new employment with a different client employer through Remedy Intelligent Staffing. Mr. Enmon called in approximately 11:30 In the morning of April 14, 2014, after he had been expected to report to work at the client employer and after the interview time that had been set for his appointment that day. The claimant reported at that time that he had been incarcerated and therefore did not report or attempt contact with the employer. It is the claimant's belief that any attempt to contact the employer would not have been successful because of his incarceration.

During the course of his assignment at Helena Industries the claimant had called in absent due to illness on March 18. The claimant had not reported for work on March 24 and was considered to have not provided the required notice that day. The claimant was warned that providing adequate notice was required. Mr. Enmon was then absent again on March 27 and 28 due to transportation issues and was discharged based upon his failure to report for the interview or scheduled work on April 14, 2014.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged under disqualifying conditions. It does.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The

focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871-24.32(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absences related to issues of personal responsibility such as transportation, lack of childcare, oversleeping or incarceration are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. Absence due to incarceration is considered to be an issue of personal responsibility and not considered excused. The evidence in the record establishes that the claimant had been absent for unexcused reasons on at least two occasions in the past during his short term of employment and had been placed on warning by the employer that his attendance was unsatisfactory. The claimant had also been warned of the necessity of providing the required notice to the employer of any impending absences.

Because the final absence to which the claimant was discharged was not related to a properly reported absence due to illness or injury and that the claimant had been properly warned the administrative law judge concludes that the employer has sustained its burden of proof in establishing disqualifying conduct. The claimant's unexcused absences during his short term of employment were excessive and the final absence unexcused. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated May 12, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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