

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L TYUS
Claimant

APPEAL NO. 08A-UI-00908-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUTCHISON INC
Employer

**OC: 12/30/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, James Tyus, filed an appeal from a decision dated January 18, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 11, 2008. The claimant participated on his own behalf. The employer, Hutchison, Inc., participated by Human Resources Manager Deb Upah and Plant Manager Dan Thompson. Exhibits One, Two, Three, and Four were admitted into record.

ISSUE:

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

FINDINGS OF FACT:

James Tyus was employed by Hutchinson from June 19, 2006 until December 21, 2007, as a full-time paint line laborer. He had received several warnings in the last months of his employment. He had requested time off for a medical procedure on September 24, 2007, but cancelled the appointment but did not come to work. On October 15, 2007, he received a warning for insubordination. On November 20, 2007, he was warned about safety violations.

On November 27, 2007, the claimant met with Plant Manager Dan Thompson and Human Resources Manager Deb Upah, at which time he mentioned he had been prescribed muscle relaxants by his doctor. He was told he was not to take any of them while at work and the warning on the label said it might cause dizziness or drowsiness.

On Friday, December 14, 2007, Mr. Thompson was called to the paint line by the supervisor because Mr. Tyus had “fallen out of the paint booth.” Mr. Thompson and Ms. Upah both arrived at which time the claimant said he had taken the prescription pain killers on an empty stomach. He was dizzy and unstable and was taken to the break room to recover and then sent home.

On Monday, December 17, 2007, he was off for a doctor’s appointment and was told to have a note documenting he had attended the appointment and any restrictions imposed by the doctor

on his physical activities. He called a supervisor at 3:00 a.m. December 18, 2007, asking what the note should say and he was told again. He said he would be in later but was no-call/no-show to work. Later that day, Ms. Upah called and told him he was suspended pending a review of his file by the corporate human resources department.

The claimant was then scheduled to meet with Ms. Upah and Mr. Thompson on December 21, 2007, where he was told he was discharged and provided with a letter stating the reasons for the discharge.

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 claimant had been warned about his absenteeism, falsifying the reason for his absences, failure to call and report his absences, failure to follow safety procedures and insubordination. He was advised his job was in jeopardy. On December 14, 2007, he took prescription medication contrary to specific instructions of the plant manager and human resources manager because this medication would impair his coordination and his ability to do his job. He jeopardized his own safety and potentially the safety of others by refusing to follow the reasonable instructions of his supervisors. This is conduct not in the best interests of the employer

DECISION:

The representative's decision of January 18, 2008, reference 01, is affirmed. James Tyus is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw