

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLYDE TRAVIS**  
Claimant

**APPEAL NO. 12A-UI-04791-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LONGVIEW HOME INC**  
Employer

**OC: 04/01/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated April 25, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 17, 2012. Claimant participated. The employer participated by Ms. Julie Newton, Administrator and Lisa Bavra, Kitchen Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Clyde Travis was employed by Longview Home Inc. as a full-time cook from July 28, 2009 until April 5, 2012 when he was discharged for failing to report or provide notification to the employer of his impending absence. Mr. Travis was paid by the hour. His immediate supervisor was Lisa Bavra.

The claimant was discharged after he failed to report or provide notification of his impending absence on April 5, 2012. The claimant at that time was on a 90-day probationary period for a previous incident where he had failed to report or provide notice to the employer. After the claimant failed to report the employer called the claimant's telephone number and left a message asking the claimant to call the employer or to report. Mr. Travis did not contact the employer to inform them of any extenuating circumstances that prevented him from reporting to work or from providing the required notice to the employer of his impending absence.

The claimant overslept through his entire work shift on April 5, 2012 because he had taken medications for a medical issue. The claimant had failed to report or provide notification in the past for the same reason.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000) and Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that unexcused absenteeism is one form of job misconduct and that the concept includes tardiness, leaving early, etcetera. The Court further held that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer.

In this matter the evidence establishes that the claimant had been absent in the past and had not provided notification as required by the employer and that the claimant had been placed on disciplinary probation for that offense. Mr. Travis was aware that any additional failure to provide notification of impending absence could result in his termination from employment.

Although the claimant was given the option of calling the employer to explain the extenuating circumstances of his most recent attendance infraction, he did not do so.

The administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. The claimant knew that his job was in jeopardy for failure to report or provide notification and did not take reasonable steps to ensure that he was not again absent without properly notifying the employer. Benefits are withheld.

**DECISION:**

The representative's decision dated April 25, 2012, 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.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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