

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN F MAUGHAN
Claimant

APPEAL NO. 06A-UI-10107-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAWN MANUFACTURING INC
Employer

**OC: 09/10/06 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

John Maughan (claimant) appealed a representative's October 4, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Fawn Manufacturing (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 6, 2006. The claimant was represented by Joseph Walsh, Attorney at Law, and participated personally. The employer participated by Jamie Badger, Director of Loss Control. The claimant offered one exhibit, which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 28, 1992, as a full-time press operator. The claimant requested and was granted short-term disability leave for a non-work-related medical issue. The claimant was to be on the leave of absence from July 25 until August 11, 2006. The claimant understood he was to return to work on August 14, 2006, and that the week of August 14, 2006, would be a partial plant shutdown. During partial plant shutdowns employees could either take vacation or work hours.

On August 9, 2006, the claimant met with the employer. He told the employer that he was not sure he could return to work on August 14, 2006. His return to work was dependant upon his doctor's recommendation. The claimant told the employer he did not want to take vacation for the week of August 14, 2006. The employer waited to hear whether the claimant would work, take vacation, or continue to be off work on short-term disability during the week of August 14, 2006.

On August 11, 2006, the claimant's physician released him to return to work. The claimant did not notify the employer. On August 14, 15, 16, 17 or 18, 2006, the claimant did not appear for work or notify the employer of his absence. On August 21, 2006, the claimant appeared at the job site and was prohibited from working. On August 23, 2006, the employer held an employment hearing and after hearing the facts of the case, decided to discharge the claimant. The employer notified the claimant of the discharge on August 24, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The claimant disregarded the employer's right by failing to appear for work or notify the employer of his absence for five days. The claimant's disregard of the employer's interests is misconduct. As such, he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 4, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit, amount provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw