

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CHAD R UPMEYER
1340 EDGEWOOD RD NW APT 202
CEDAR RAPIDS IA 52405**

**SLB OF IOWA LC
PANERA BREAD OF IOWA
315 – 3RD AVE SE #210
CEDAR RAPIDS IA 52401**

**Appeal Number: 05A-UI-05003-JTT
OC: 04/14/05 R: 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Panera Bread filed a timely appeal from the May 2, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 15, 2005. Linda Sinclair, Director of Shared Services, represented the employer and presented additional testimony through Manager Darris Howe. Chad Upmeyer participated. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Chad Upmeyer was employed by Panera Bread as a full-time assistant manager from October 1, 2004 until April 1, 2005, when District Manager Ken Matlack discharged him for misconduct based on a missed shift.

The incident that prompted the discharge occurred on March 28, 2005. On that date, Mr. Upmeyer was supposed to conduct an employee training session during which he was supposed to review changes in the menu with the employees. The new menu went into effect on March 30. The meeting was to begin at 8:30 p.m. Mr. Upmeyer forgot about the training session until later in the evening after the meeting had already concluded. When Mr. Upmeyer did not appear for the meeting, the store manager had to scramble to put together a presentation. Mr. Upmeyer's failure to attend the meeting was not intentional. Mr. Upmeyer had received no prior reprimands in the course of his employment. The missed training session and its impact on store operations was the only basis for the discharge.

REASONING AND CONCLUSIONS OF LAW:

The evidence in the record establishes that the decision to discharge Mr. Upmeyer was based on a single unexcused absence and a single incident of negligence.

The question for the administrative law judge whether the single unexcused absence and/or the single act of negligence constitutes misconduct in connection with the employment that would disqualify Mr. Upmeyer for unemployment insurance benefits.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 Supreme Court of Iowa has determined that a single unexcused absence does not constitute misconduct. See Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989).

The employer bears 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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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).

Based on the evidence in the record and the applicable law cited above, the administrative law judge concludes that Mr. Upmeyer was not discharged for misconduct in connection with the employment, because there was but one unexcused absence and but one incident of negligence. Mr. Upmeyer was discharged for no disqualifying reason and is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Upmeyer.

DECISION:

The representative's decision dated May 2, 2005, reference 01, is affirmed. The claimant was discharged from his employment for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

jt/pjs