

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY K STEARNS
Claimant

APPEAL NO. 09A-UI-11812-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC
Employer

**Original Claim: 07/19/09
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated August 17, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 1, 2009. The employer participated by Mitch Gravert, production manager, and Vicki Rixen, human resources coordinator. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Mitch Gravert and the testimony of Vicki Rixen.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures plastic molders. The claimant was hired on August 26, 2008, as a full-time manufacturing team member. He was terminated on July 20, 2009, for excessive absenteeism. The claimant's last day of work was July 17, 2009. He was scheduled to work on July 20, 2009, but was a no-call, no-show. The claimant did call Mitch Gravert later on July 20, 2009, to say that he had been in jail and was unable to call prior to the start of his shift.

The employer has a written attendance policy set forth in its employee handbook. That policy states that an individual can have no more than seven infractions in a six-month period. The claimant was given a write-up for attendance when he reached five points on June 11, 2009. The claimant was informed that further absences, including tardiness or leaving early, would lead to termination. The claimant had worked previously at the employer's plant in Clinton and was on probation for attendance violations with that facility before he transferred to the DeWitt plant.

The claimant was terminated on July 20, 2009, as a result of his habitual attendance problems.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there is a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W. 2d 187 (Iowa 1984). The absences must be both excessive and unexcused. Absence due to matters of personal responsibility is considered unexcused.

The final incident that led to the claimant's termination was a no-call, no-show on July 20, 2009. The claimant was in jail. This was a non-excused absence. Prior to the no-call, no-show, the claimant was on a final warning for attendance violations. According to the employer's records, he was out for personal reasons or left early. Ms. Rixen testified that when the log shows "out for personal reasons," the employee has not reported an emergency or illness. Not only did the claimant violate the attendance policy at the DeWitt plant, but he had been on probation for attendance problems at the Clinton facility.

The employer has shown misconduct that disqualifies the claimant from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The representative's decision dated August 17, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw