

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON T BARTELS**

Claimant

**APPEAL NO. 13A-UI-12660-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GUARDIAN INDUSTRIES CORP**

Employer

**OC: 10/13/13**

**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jason Bartels, filed an appeal from a decision dated November 7, 2013, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 10, 2013. The claimant participated on his own behalf. The employer, Guardian Industries, participated by Senior Human Resources Generalist Shannon Langenberg and Shift Manager David Schaumann.

**ISSUE:**

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

**FINDINGS OF FACT:**

Jason Bartels was employed by Guardian Industries from October 4, 2010 until October 19, 2013 as a full-time production worker. He was issued a written warning for absenteeism on August 5, 2013, and then was on excused family medical leave from August 16 through 23, 2013, which was not counted against his absenteeism. He missed scheduled overtime on September 18, 2013, and was absent from work October 11 through 14, 2013, for back problems, although he never went to see a doctor.

Supervisor Bob Parker, Shift Manager Dave Schaumann and Senior Human Resources Generalist Shannon Langenberg met with the claimant on October 18, 2013, about his absenteeism. He had reached the point in the disciplinary process where a “fact finding” meeting was held. The employer told him his job was in jeopardy and he was asked to provide a written action plan to set out how he intended to improve his conduct and attitude in order to retain his job. This was to be presented at 8:00 a.m. on October 19, 2013.

The claimant was no-call/no-show to the meeting on October 19, 2013, but did call in at 8:05 a.m. He told the employer he was not able to get to work because he had no gas in his car and no money to buy gas. He said he had known about the situation the day before when he initially agreed to come to the meeting, but “didn’t know” why he did not tell the employer then

rather than agreeing to attend the meeting. He also said he “didn’t know” why he had not notified someone before 8:00 a.m.

Ms. Langenberg asked him why he did not get a ride to work from his co-worker, as he usually did. The claimant said the shift started at 5:45 a.m. and the meeting was at 8:00 a.m. He could not provide a reasonable explanation as to why he was not willing to ride to work with his co-worker and simply wait in a break room until 8:00 a.m.

The employer asked him if he was aware the meeting was critical to his continued employment and he acknowledged he was aware of that. She asked if there was any point in continuing the meeting about his employment and he said “at this point I don’t know.” He was discharged at that time.

### **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.

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 claimant had been advised his job was in jeopardy as a result of his absenteeism. He had an opportunity to save his job by appearing at the meeting on October 19, 2013, with an action plan. Rather than make a reasonable effort to attend the meeting he simply did not show up. He made not the slightest attempt to get money for gas, or ride to work with his friend and wait for the meeting.

Mr. Bartels showed a profound indifference toward the problem of maintaining his job. It appears he merely decided he did not want to continue working for Guardian Industries and allowed himself to be discharged by default by failing to appear for a critical meeting with an action plan. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. Under the provisions of the above Administrative Code section, excessive, unexcused absenteeism is misconduct and the claimant is disqualified.

**DECISION:**

The representative's decision of November 7, 2013, reference 02, is affirmed. Jason Bartels is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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