

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A CONDUFF
Claimant

APPEAL NO. 12A-UI-06834-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOSEPH L ERTL INC
Employer

**OC: 05/13/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joseph L Ertl (employer) appealed a representative's May 31, 2012 decision (reference 01) that concluded Robert Conduff (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 3, 2012. The claimant participated personally. The employer participated by Jane Ertl, President; Deb Fangmann, Human Resources Assistant; and Jeff Boeckenstedt, Production Manager. Dean Johnson, Operations Manager, observed the hearing. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 15, 2011, as a full-time laborer. The employer thought it issued the claimant a handbook but the claimant did not receive it. On November 16, 2011, the employer issued the claimant a notification that the claimant had accumulated seven attendance points. On January 30, 2012, the employer issued the claimant two notifications. One stated the claimant had accumulated nine points as of December 27, 2011. The other stated the claimant had accumulated eleven points as of January 19, 2012. The notification indicates that an accumulation of twelve points within twelve months would be cause for discharge. On March 1, 2012, the employer issued the claimant a Final Attendance Notification. It stated, "If you miss any scheduled work between now and April 1, 2012, which is not professionally documented, you will be terminated." The claimant was not absent during that period.

The claimant properly reported his absence due to illness on April 23 and 24, 2012. The production manager was immediately aware of the absence. The employer terminated the claimant on May 15, 2012, for his absences on April 23 and 24, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on April 23 and 24, 2012. The claimant's absence does not amount to job misconduct because it was properly reported and too remote from the termination. The employer has failed to provide any evidence of willful and

deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's May 31, 2012 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css