

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD J SCHNOES
Claimant

APPEAL NO. 09A-UI-18825-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

**Original Claim: 11/15/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 7, 2009, reference 01, which held claimant not eligible for benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on January 27, 2009. The claimant participated personally. The employer stated they would not participate.

ISSUE:

At issue is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The claimant was employed as a full-time maintenance mechanic for Wells Dairy, Inc. from August 3, 1999, until November 3, 2009, when he was discharged for exceeding the company's "no fault" attendance policy. Mr. Schnoes was employed on a full-time basis and was paid by the hour.

The claimant was discharged when he accumulated ten attendance occurrences on November 3, 2009, when he was unable to report to work due to the effects of prescription medication that had been prescribed by his doctor for a shoulder condition. The claimant was unable to provide the company's required "24-hour advance notice of absences" because he did not know one day in advance that he would be absent. Four attendance occurrences took place when the claimant believed that he was still covered by the Family Medical Leave Act due to the recent death of his wife. He was not informed until after the fourth occurrence that he was no longer covered by the act. The claimant had not been absent or tardy for the approximate ten years of employment preceding his wife's illness and death.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes sufficient intentional misconduct to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance 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 App. 1992).

The evidence in the record does not establish intentional disqualifying conduct on the part of this claimant. The claimant was absent due to factors beyond his control. The claimant could not reasonably be expected to adhere to the company requirement that he provide 24 hours' advance notice of his impending absence. Benefits are allowed.

DECISION:

The representative's decision dated December 7, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw