

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORENZO TAGGER**  
Claimant

**APPEAL NO. 13A-UI-03282-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**J&D RESTAURANTS INC**  
Employer

**OC: 09/09/12**  
**Claimant: Respondent (4)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 13, 2013, reference 02, that concluded the claimant was able to and available for work. A telephone hearing was held on April 25, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Scott Coffin participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time as a crew person in the employer's McDonald's restaurant from April 27, 2012, to September 30, 2012. He was informed and understood that under the employer's work rules, employees were required to notify the employer at least two hours before the start of their shift if they were not able to work as scheduled and were subject to discharge after three absences without notice. The claimant had received two prior warnings about missing work without calling in.

The claimant was scheduled to work on October 1, 2012. He was absent again without notice to the employer. About 20 minutes after his shift start, the shift manager called the claimant and told him that if he did not report to work, he would be terminated. He informed the shift manager that he was not reporting to work. The claimant was discharged for excessive unexcused absenteeism.

The claimant worked and earned 10 times his weekly benefit amount working for Aerotek Inc. before reapplying for unemployment insurance benefits effective January 27, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: “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.” 871 IAC 24.32(7).

The claimant was discharged for work-connected misconduct. As of January 27, 2013, he had requalified for benefits through his employment with Aerotek Inc. The employer’s account is exempt from charge for benefits paid to the claimant.

**DECISION:**

The unemployment insurance decision dated March 13, 2013, reference 02, is modified in favor of the employer. The claimant was discharged for work-connected misconduct, but requalified before he reapplied for benefits effective January 27, 2013. The employer’s account is exempt from charge for benefits paid to the claimant.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs