

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**SCOTT E KUNKEL
1715 S CYPRESS
SIOUX CITY IA 51106**

**PECH OPTICAL CORP
PO BOX 2820
SIOUX CITY IA 51106**

**Appeal Number: 05A-UI-02397-CT
OC: 02/06/05 R: 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Pech Optical Corporation (Pech) filed an appeal from a representative's decision dated March 4, 2005, reference 01, which held that no disqualification would be imposed regarding Scott Kunkel's separation from employment. After due notice was issued, a hearing was held by telephone on March 24, 2005. The employer participated by Kathy Tucker, Human Resources and Karen Lindberg, Accounting/Human Resources Manager. Mr. Kunkel responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Kunkel was employed by Pech from April 14, 2004 until February 8, 2005 as a full-time maintenance and production worker. He was discharged because of his attendance. Mr. Kunkel left work early on 14 occasions between April 29 and December 29. He did not check with any supervisor before leaving. The reasons he left early are unknown. Mr. Kunkel was late five times during the course of his employment, the last of which was October 5. All of his remaining absences were due to illness except that of April 29.

Mr. Kunkel's final absences began on January 31 and were supported by a doctor's excuse. The final absence due to illness was on February 7 and Mr. Kunkel was discharged on February 8. He had received warnings on September 29 and November 22. Warnings dated January 31, February 1, and February 2 were presented to Mr. Kunkel on the date of discharge, as he was not at work on the dates they were written.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Kunkel was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

The employer's burden of proof in this matter included establishing that there was a current act of unexcused absenteeism in relation to the discharge date. Mr. Kunkel had last been late on October 5 and had last left early on December 29. All of his absences thereafter were due to illness, were properly reported and are, therefore, excused absences. Even if his leaving early on December 29, 2004 was an unexcused absence, it would not be a current act in relation to the February 8, 2005 discharge date. For the above reasons, it is concluded that a current act of misconduct has not been established and benefits are allowed. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated March 4, 2005, reference 01, is hereby affirmed. Mr. Kunkel was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf