

**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**

**MATTHEW M MOELLER  
LOT 21  
5909 AVE 'O'  
FORT MADISON IA 52627**

**RICHERS TRUCKING INC  
1727 – 346<sup>TH</sup> AVE  
WEVER IA 52658-9540**

**Appeal Number: 05A-UI-11072-HT  
OC: 10/02/05 R: 04  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Matthew Moeller, filed an appeal from a decision dated October 20, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 14, 2005. The claimant participated on his own behalf. The employer, Richers Trucking, Inc., participated by Office Manager Paula Houston.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Matthew Moeller was employed by Richers Trucking, Inc., from March 7 until October 6, 2005. He was a full-time wash bay attendant.

The claimant had been talked to by Office Manager Paula Houston on at least two occasions about his attendance. Those warnings were given on Monday mornings August 15 and September 19, 2005, because the claimant had left before noon on the previous Fridays without asking for permission or notifying anyone. She told him he needed to be "more reliable" or he might have to be replaced.

Mr. Moeller was a no-call/no-show to work on October 5, 2005, and then called in after the start of his shift on October 6, 2005, and told the secretary he would be late getting to work because he was waiting for a check to clear. He called in again around 10:30 a.m. and spoke with Ms. Houston. He explained he had taken a friend to a doctor's appointment in Iowa City the previous day and had known about it two days in advance but had not told anyone at Richer's Trucking, Inc., to either ask for permission to take the day off or even to notify someone on the actual day that he would be absent. He assumed it would "be okay" if he explained it when he got back.

He was late coming to work on October 6, 2005, because the person he took to Iowa City had given him a check for gas which had not yet cleared the bank and he needed money to buy more gas to get to work. Ms. Houston told him at that time he need not come in to work because the company needed someone more reliable.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 denies receiving any warnings about his attendance but the employer has established the dates on which he was verbally counseled about the need to be at work during his scheduled shifts. Leaving early on Fridays after getting his paycheck was done without the knowledge or permission of this supervisor. His final incident of absenteeism was a no-call/no-show to work on October 5, 2005, for a personal errand on behalf of a friend. He could have notified the employer in advance but failed to do so, apparently believing an explanation after the fact would be adequate, but it was not. In addition, he was tardy to work the next day because he did not have gas to get to work. This is also not excused because transportation problems are not an excused absence. See Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant was discharged for excessive unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

#### DECISION:

The representative's decision of October 20, 2005, reference 01, is affirmed. Matthew Moeller is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/pjs