

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES M ZART**  
Claimant

**APPEAL NO. 11A-UI-04186-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURL HAWK-EYE CO**  
Employer

**OC: 02/20/11**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, James Zart, filed an appeal from a decision dated March 29, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 26, 2011. The claimant participated on his own behalf and with Michelle Kane and Tim Agnew. The employer, Burl Hawk-Eye, participated by Production Manager Steve Deggendorf and Human Resources Manager Jan Jaeger.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

James Zart was employed by Burl Hawk-Eye from April 7, 1997 until February 9, 2011 as a full-time maintenance person. Throughout the course of his employment he received written warnings about missing work, not doing his job, and not properly reporting his absences. Production Manager Steve Deggendorf had specifically told him on more than one occasion that if he was going to be absent, Mr. Zart must call him directly on his cell phone to report the absence. The claimant was provided with the cell phone number and had used it regularly with questions about job orders.

On February 2, 2011, a large snow storm kept many of the employees home from work. The claimant stayed home although he lived only three blocks from the work place. He did not notify Mr. Deggendorf he would be absent. The plant manager did not discover the claimant had been absent until he did the payroll on Sunday, at which time he found a leave slip. When questioned, Mr. Zart said he “did not think to call” although at the appeal hearing he maintained he called the reception desk.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 claimant had been warned he needed to work his scheduled shifts and perform his job duties as required. The plant manager had also been very specific that Mr. Zart must contact him, and only him, directly if he was going to be absent. The claimant deliberately failed to do this on February 2, 2011. He could not give any logical reason why he did not call Mr. Deggendorf as instructed.

The absence might have been excused if it had been properly reported. But it was not properly reported. In conjunction with prior warnings and disciplinary action, this constitutes insubordination and a failure to follow the reasonable instructions of a supervisor. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of March 29, 2011, reference 01, is affirmed. James Zart is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs