

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY M RUNICE**  
Claimant

**APPEAL NO. 08A-UI-06843-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BITUMA CORP**  
Employer

**OC: 06/22/08 R: 04  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Bituma, filed an appeal from a decision dated July 18, 2008, reference 01. The decision allowed benefits to the claimant, Cody Runice. After due notice was issued, a hearing was held by telephone conference call on August 12, 2008. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Manager Marilyn Hackett.

**ISSUE:**

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

**FINDINGS OF FACT:**

Cody Runice was employed by Bituma from February 12, 2007 until June 2, 2008, as a full-time welder. All employees are given 48 attendance points at the beginning of each calendar year, from which points are deducted for absences. Employees may work with a “zero balance” of points but will be discharged if they accrue a negative balance. To properly report an absence or tardy, the employee must call within the first hour of the shift. After the first hour, additional points would be assessed.

Mr. Runice received written warnings on February 7; March 3, 24, 31; and April 2, and 7, 2008, regarding his point total. The points were accumulated due to being tardy to work or for “personal” business. The last warning notified him he had reached zero points and if he had any other unexcused absences, he would be discharged. On June 2, 2008, the claimant was to report to work at 6:00 a.m. He did not call in until 7:45 a.m., and reported to Human Resources Manager Marilyn Hackett he had overslept and knew he had no more points and had used all of his vacation time. He asked if he still had a job and was told he did not.

Cody Runice filed a claim for unemployment benefits with an effective date of June 22, 2008. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

## REASONING AND CONCLUSIONS OF LAW:

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.

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 had been advised his job was in jeopardy as a result of his absenteeism, because he had exhausted all of the points available to him. The final incident was a tardy due to oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism after being warned. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

**DECISION:**

The representative's decision of July 18, 2008, reference 01, is reversed. Cody Runice 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/kjw