

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANE R EDELEN**  
Claimant

**APPEAL NO: 12A-UI-00743-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SULLY CONSTRUCTION INC**  
Employer

**OC: 12/26/11  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated January 17, 2012, reference 01, that held the claimant was not discharged for misconduct on December 12, 2011, and benefits are allowed. A hearing was held on February 15, 2012. The claimant, and his mother, Susan Edelen, participated. Cory Van Zante, Vice-President, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a general laborer about March 2009, and left work to go to school for a period of time. Claimant returned to work in March 2010 and continued employment until a seasonal lay-off on Christmas Eve. He returned to work in March 2011 and last worked on December 9, 2011.

The claimant was advised that he could expect a seasonal lay-off. He experienced a health issue that resulted in a hospital visit on December 2. He called in absences from work due to the health issue on December 5 and 6. He was not disciplined for missing work.

Claimant called in an absence on December 9, and the company president responded he was tired of the claimant's attitude and he was letting him go for a seasonal lay-off. A short time later, the president called claimant to question him about a work tool. Claimant had taken an employer buck knife home to sharpen as he had done so on prior occasions. The employer had given claimant a verbal warning about taking home an employer saw without management approval.

The employer does not have formal written disciplinary policies. Claimant had not been issued a written warning his job was in jeopardy for any reason. The employer completed its seasonal work on January 18, 2012.

## 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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 12, 2011. While the employer denies it let claimant go in anticipation of a seasonal lay-off, this had been the pattern of work for the prior two years.

While the employer had some issues with claimant's job performance, it failed to issue any written or formal warning to put claimant on notice his job was in jeopardy. Calling in absences due to properly reported illness is not misconduct. Taking an employer buck knife home to sharpen as had been permitted on prior occasions is not misconduct. Absent a formal warning, the employer failed to establish the required behavior standard for the claimant to establish job disqualifying misconduct.

**DECISION:**

The department decision dated January 17, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on December 12, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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