**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

**CHRISTOPHER L HANS**
**1332 GRANDVIEW DR**
**CLINTON IA 52732**

**OLYMPIC STEEL IOWA INC**
**C/O TALX EMPLOYER SERVICES**
**PO BOX 1160**
**COLUMBUS OH 43216-1160**

**Appeal Number: 04A-UI-11237-RT**
**OC: 08-29-04 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, 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:

The claimant, Christopher L. Hans, filed a timely appeal from an unemployment insurance decision dated October 12, 2004, reference 03, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on November 9, 2004, with the claimant participating. Kathy Truelson, Office Manager and Human Resources Representative, participated in the hearing for the employer, Olympic Steel Iowa, Inc. Chad Schuh, Operations Manager, was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

At 9:00 a.m. the employer had not called in a telephone number where witnesses could be reached for the hearing. The administrative law judge reached the claimant and began the hearing when the record was opened at 9:01 a.m. The employer called at 9:14 a.m. and the hearing was still going on and left the names of the witnesses and a telephone number where the witnesses could be reached. The administrative law judge called that number at 9:15 a.m. and the employer participated in the balance of the hearing.

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: The claimant was employed by the employer as a full-time warehouse worker/crane operator or shop helper from the end of July 2003 until he was discharged on September 20, 2004. The claimant when first hired was a temporary worker but became a regular full-time employee on November 3, 2003. The claimant was discharged for leaving work without permission and for poor attendance. On September 18, 2004, the claimant had come to work but not clocked in. On his way to work he had learned of a family emergency in which the family dog had been run over by a car in front of his children who are ages three and five. The claimant told the foreman about this matter and the foreman informed the claimant that he might be endangering his job if he left work. Nevertheless, the claimant left work. He was then discharged on the next working day, September 20, 2004.

The claimant had other absences and tardies. On November 12, 2003, the claimant was absent because of weather. He properly notified the employer of his absence. On December 5, 2003, the claimant was absent but could not remember a reason other than a coworker whom the claimant picked up was late. On December 26, 2003 and January 3, 2004, the claimant was late because he picked up a coworker who was running late. On December 30, 2003, the claimant was absent for personal illness. He notified the employer but did not provide a doctor's excuse. The employer does not require a doctor's excuse. The employer has a rule that provides that an employee must notify the employer of an absence or tardy but there is no deadline for that but the employer prefers that it be before the start of the shift. The claimant was also absent on February 2, 2004 but did not remember why although he did notify the employer. The claimant was also absent from May 4 through the 8, 2004 because of a back injury. The claimant properly notified the employer and did provide a doctor's excuse. On May 15, 2004, the claimant was again absent because of his back injury. He notified the employer but did not provide a doctor's excuse. On May 21, 2004, the claimant left work early because of a lack of a babysitter. The claimant did not have permission but merely informed someone that he was leaving and did so. On May 28, 2004, the claimant was tardy because he was simply running late. He notified the employer. On June 21, 2004, the claimant was again tardy because he was just running late although he did notify the employer. On August 13, 2004, the claimant was absent for personal illness and this was properly reported but without a doctor's excuse.

The claimant received warnings for his attendance as follows: a verbal warning with a written record on both January 6, 2004 and March 13, 2004. The claimant then received a written warning on June 24, 2004 and finally a three-day suspension on August 16, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 parties agree that the claimant was discharged but disagree as to the date. The administrative law judge concludes that the employer's witness, Kathy Truelson, Office Manager/Human Resources Representative, was more credible when she testified that the claimant was discharged on September 20, 2004. This would be in keeping with the date that the claimant reopened his claim for benefits effective September 26, 2004. Accordingly, the administrative law judge concludes that the claimant was discharged on September 20, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the

consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, including, excessive unexcused absenteeism.

The claimant was discharged for leaving work without the employer's permission and for poor attendance. Both parties concede that the claimant left his employment but differ on the date. The administrative law judge concludes that Ms. Truelson's testimony is more credible when she testified that the claimant left his employment on Saturday, September 18, 2004. The claimant testified that he did so for a personal family emergency when the family dog was run over and killed in front of his minor children, ages three and five. The claimant never clocked in that day. He learned about the death of his dog while going to work and informed the foreman before he clocked in that he was going to have to leave. The claimant testified that the foreman said it was the claimant's call. Ms. Truelson testified that the foreman told the claimant that he would be endangering his job. The administrative law judge does not believe that these two statements are necessarily contradictory. The administrative law judge concludes that the claimant was aware that his job was in jeopardy if he left his employment not only because of the statements by the foreman but because of the series of warnings culminating with the three-day suspension on August 16, 2004 as noted below. In any event, the claimant left and was absent the entire day. The administrative law judge is not convinced that in view of the claimant's precarious situation with his attendance, that leaving work because of the loss of a pet is reasonable cause especially when the claimant was absent the entire day. If it was such a family emergency, surely the claimant could have returned to work after seeing that his children were all right. The administrative law judge must conclude here that the claimant was not justified in missing the entire day of work for this reason.

The claimant also had other absences and tardies as set out in the findings of fact. Among those absences and tardies were an absence on December 5, 2003 which the claimant did not remember and two tardies on December 26, 2003 and January 3, 2004 because his coworker, who rode with the claimant, was late. The administrative law judge might understand one tardy for this but not two running in close succession. The claimant should have made it clear to his coworker that he could not wait for the coworker because he needed to be at work on time. The claimant also had two tardies on June 21, 2004 and May 28, 2004 when he was simply running late. The claimant also left work early on May 21, 2004 because of a babysitter. Finally, the claimant was absent on February 2, 2004 but could not remember why. The administrative law judge is constrained to conclude that all of these absences and tardies are not for reasonable cause or personal illness and are excessive unexcused absenteeism. The administrative law judge excludes from this conclusion the claimant's absences for personal illness or injury even if the claimant did not provide a doctor's excuse. The employer could provide no evidence that the claimant was not ill or injured and the employer's witness testified that doctor's excuses are not required. Nevertheless, the other absences and tardies as noted above establish excessive unexcused absenteeism.

The claimant received a number of warnings including a verbal warning with a written record on January 6, 2004 and March 13, 2004. The claimant then received a written warning on June 24, 2004. Finally, the claimant received a three-day suspension on August 16, 2004. It appears to the administrative law judge that the claimant was well aware of the employer's concerns about his attendance but nevertheless the claimant persisted in attendance issues and was discharged.

The administrative law judge is constrained to conclude on the evidence here that the claimant's absences and tardies as set out above were excessive unexcused absenteeism and disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of October 12, 2004, reference 03, is affirmed. The claimant, Christopher L. Hans, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

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