

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A PAYNE
Claimant

APPEAL NO. 06A-UI-09913-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KATECHO INC
Employer

OC: 09-10-06 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a fact-finder's decision dated October 2, 2006, reference 01, which held ineligible to receive unemployment insurance benefits upon a finding that he was discharged under disqualifying conditions. After due notice was issued, a hearing was held by telephone conference call from Des Moines, Iowa on October 24, 2006 at which time the claimant participated and testified in his own behalf. Participating on behalf of the employer was Ms. Jane Schmeling, Director of Human Resources.

ISSUE:

Did the claimant voluntarily leave employment under disqualifying conditions or was the claimant separated by the employer for reasons that are disqualifying?

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Mark A. Payne was employed by Katecho, Inc. from April 24, 2001 until August 19, 2005. The claimant worked as a production worker on a full-time basis and was paid by the hour. His immediate supervisor was Teresa Severino. Mr. Payne was discharged after he failed to report for scheduled work and did not provide notification to his employer for an extended period. Mr. Payne was arrested at the Katecho facilities on August 19, 2005, for an outstanding warrant. Mr. Payne was removed from the facility and was incarcerated for approximately 34 days.

During the period of incarceration, Mr. Payne did not contact Katecho, Inc. or have any other individuals contact the employer in his behalf. Prior to being arrested that morning the claimant had not requested time away from work for a leave of absence from the company. Although the company's Human Resources director was present at the time that the claimant was arrested, Mr. Payne made no request for time away from work. The claimant did not instruct family members to contact the employer to request time off or to notify the employer of the claimant's status.

Under established company policy, employees are subject to discharge after they fail to report or provide notification for three consecutive days. It is the claimant's contention that his

immediate supervisor may have been involved in reporting the claimant's whereabouts to police authorities after it had been reported in a local newspaper that there was a warrant for the claimant's arrest.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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).

The evidence in the record establishes that Mr. Payne was arrested because of an outstanding warrant on August 19, 2005 and did not report back to work for over 30 days. At the time of the claimant's arrest and throughout the time of his incarceration, the claimant did not contact the employer to request time away from work or to keep the employer informed of his status. Mr. Payne was in contact with family members but did not have any other individuals contact the company to attempt to provide a notification or request time away from work. The claimant was aware of the company's attendance policies and requirement that he provide notification and secure a leave of absence in advance of leaving work.

Although the administrative law judge is sympathetic to the claimant's situation, the claimant's perception that his supervisor may have called police does not mitigate or remove the claimant's obligation to request and secure time away from work before being absent. The evidence also establishes that Mr. Payne did not utilize family members or others to contact the employer although Mr. Payne had the opportunity to call at least one family member after being incarcerated. In the opinion of the administrative law judge the claimant's obligation to request and secure permission to be away from work was not altered by the claimant's perception that his supervisor may have provided information that led to his arrest. The claimant's absence without authorization and/or notification was in disregard of the employer's interests and

standards of behavior and thus disqualifying under the provisions of the Iowa Employment Security Law.

DECISION:

The agency representative's decision dated October 2, 2006, reference 01, is affirmed. The claimant was discharged under disqualifying conditions and is disqualified for unemployment insurance benefits until he has worked in and has been paid wages for insured work equaling ten times the weekly benefit allowance, provided that he meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw