

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL W SCOTT
Claimant

APPEAL NO. 10A-UCFE-00052-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VA CENTRAL IOWA HEALTH
Employer

OC: 09/12/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Michael Scott, filed an appeal from a decision dated December 9, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 31, 2011. The claimant participated on his own behalf. The employer, VA Central Iowa Health, participated by Human Resources Specialist Greg Smith.

ISSUE:

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

FINDINGS OF FACT:

Michael Scott was employed by VA Central Iowa Health from September 13, 2009 until September 1, 2010 as a full-time food service worker. His last day of work was August 9, 2010, and he did not come to work after that date. He had called in absent around 5:30 a.m. on August 11, 2010, because of flooding in his apartment. His supervisor, Patrick Kean, told him to be in for lunch but he did not appear.

Mr. Scott maintains Mr. Kean fired him at that point but a food service supervisor does not have the authority to fire a subordinate, only recommend discharge to the personnel in human resources. No such recommendation was made until August 12, 2010, when the claimant had not appear for work for several days. Mr. Scott had still not appeared for work by the time the employer sent him a letter on August 17, 2010, notifying him he would be discharged effective September 1, 2010.

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.

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 was discharged for failing to come to work for at least three days after his last day of work. He still had not appeared a week later when the employer sent him the notice of separation.

Mr. Scott appears to have had some personal problems but matters of purely personal consideration, such as court dates, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of December 9, 2010, reference 01, is affirmed. Michael Scott is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs