

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN T RICHARDS
Claimant

APPEAL NO. 06A-UI-11423-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMONWEALTH ELECTRIC
COMPANY OF THE MIDWEST**
Employer

**OC: 07/30/06 R: 01
Claimant: Appellant (5)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Brian Richards, filed an appeal from a decision dated November 20, 2006, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 13, 2006. The claimant participated on his own behalf and with a witness, Chastity Christie. The employer, Commonwealth Electric Company of the Midwest (Commonwealth), participated by Manager Chris Gall.

ISSUE:

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

FINDINGS OF FACT:

Brian Richards was employed by Commonwealth from September 26 until October 18, 2006. He was a full-time technician working 6:00 a.m. until 4:30 p.m. The employer's policy requires any employee who is not going to come to work for a scheduled shift to call the job-site supervisor, preferably prior to the start of the shift.

The claimant had volunteered to work on Sunday, October 15, 2006, but he did not come to work. He called and left a message on the office answering machine rather than contacting his supervisor. The reason he missed work was that he had been evicted from his residence and was in the process of finding a new place to live. He missed work on October 16 and 17, 2006, for the same reason. He called on at least one of these days and left another message on the office answering machine, which was not the proper place to report his absence. At no time did he make an effort to contact his supervisor or Manager Chris Gall to explain his situation and formally request time off to move to a new residence.

When the claimant did not appear for work on October 17, 2006, Mr. Gall told him to come into the office the next day, which he did. At that time he was told he was discharged.

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 missed three days in a row for personal reasons, which is not an excused absence. See Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant could have been approved for the time off if he had only contacted his supervisor or manager in advance to explain the situation. His failure to do this means the absences were not excused. Three unexcused absences in a row, in so short a period of employment, must be considered excessive. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of November 20, 2006, reference 03, is modified without effect. Brian Richards was discharged for misconduct. He 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/kjw