

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY C COLLIER
Claimant

APPEAL NO. 13A-UI-08703-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC
Employer

OC: 06/02/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated July 19, 2013, reference 01, that concluded claimant was ineligible to receive unemployment insurance benefits. A telephone hearing was scheduled for September 3, 2013. The employer participated by Ms. Elizabeth Gerome, Account Manager. Employer's Exhibit A was received into evidence. Based upon the appellant's failure to participate in the hearing, the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The administrative law judge finds Jerry Collier was employed by Jacobson Staffing Company, LC from September 24, 2012 until May 29, 2013 when he was discharged for excessive, unexcused absenteeism. Mr. Collier was assigned to work as a forklift operator at the Jacobson Staffing Company and was paid by the hour. His contact person at Jacobson Staffing Company was Elizabeth Gerome.

Mr. Collier was discharged after exceeding the permissible number of attendance infractions allowed under established company policy. Mr. Collier was aware of the policy and had been warned by the company. The claimant was discharged when he accumulated nine infraction points due to his attendance. The claimant reached nine infraction points on May 29, 2013. On that day the claimant did not report for work and did not properly notify the employer of his

impending absence by calling his contact person at Jacobson Staffing before the beginning of the work shift to report that he was not coming to work. The claimant was aware that company policy required him to notify both Jacobson Staffing Company as well as the client location if he were not able to report for work.

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.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice

to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The claimant was discharged when he exceeded the permissible number of attendance infractions allowed under company policy and did not properly report his last absence as required by company policy. Mr. Collier was aware that he was required to notify Jacobson Staffing Company if he were unable to report for scheduled work, however, the claimant did not do so. The employer considered the claimant's number of absences to be excessive and unexcused based upon the employer's attendance policy.

There being no evidence to the contrary, the administrative law judge concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

DECISION:

The unemployment insurance decision dated July 19, 2013, reference 01, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect. The decision will become final unless an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs