

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HARRY R JORDAN**  
Claimant

**APPEAL NO. 10A-UI-09703-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEWITTS SERVICE CENTER LTD**  
Employer

**OC: 06-06-10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 29, 2010, reference 01, decision that denied benefits. After due notice was issued, an in person hearing was held on September 7, 2010. The claimant did participate. The employer did participate through Stephen Hewitt, President.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a painter/laborer full time beginning September 21, 2009 through June 7, 2010 when he was discharged.

The claimant was to work until approximately 6:00 p.m. on June 4, 2010. He left work early at 12:50 p.m. without telling his supervisor he was leaving and without permission to leave early. The claimant left without completing his job duties and without cleaning up his work area. The claimant left work early to attend a dance recital for his daughter at 4:00 p.m. There was no reason for the claimant to leave work so early ahead of the dance recital. The claimant had been moved around the shop to several different areas as his coworkers complained to the owner that he was not doing his share of the work and none of them wanted to work with him any longer. He was moved out of the tire area because the other employees complained repeatedly about the claimant's failure to complete his job duties and his goofing off while on the clock. The claimant knew he was to obtain permission before leaving work but did not do so. The claimant had been warned verbally about his ongoing work issues by Mr. Hewitt.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant left work early without permission and without completing his job duties or cleaning up his work area. He had been warned about his performance issues several times by Mr. Hewitt and knew or should have known that his failure to complete work duties was placing his job in jeopardy. Claimant's repeated failure to accurately perform his job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The June 29, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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