

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONATHAN D STRICKER**  
Claimant

**APPEAL NO. 07A-UI-03038-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENSEN BUILDERS LTD**  
Employer

**OC: 02/11/07 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jonathan D. Stricker (claimant) appealed a representative's March 22, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Jensen Builders, L.T.D. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2007. The claimant participated in the hearing. Mick McBride appeared on the employer's behalf and presented testimony from one other witness, Nate Galles. During the hearing, Employer's Exhibits One through Three and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 10, 2005. He worked full time as a steel worker in the employer's general construction business. His last day of work was February 13, 2007. The employer discharged him on that date. The stated reason for the discharge was unexcused absenteeism.

The claimant had had prior unexcused absences, including four days of no-call, no-show; he received a final warning for attendance on October 17, 2006 and was advised that any further absences should be documented with a doctor's excuse. The claimant called in an absence on February 6, 2007. He was a no-call, no-show for February 7, February 8, and February 9. He reported back for work the morning of February 12, unsure if he still had a job, but when he told the employer that he had a doctor's excuse for the days, the employer indicated the absence would be excused if he presented the excuse. The claimant responded that he could not produce the excuse at that moment, as he had left it in his girlfriend's car. He was then allowed to work that day with the understanding that he would bring in the excuse the following morning.

On February 13 he presented as the doctor's excuse an excuse dated February 12, which only stated "no work 2/13/07" and "excuse for days missed." (Employer's Exhibit Three.) As this did not specify what dates the claimant had been seen by the doctor other than February 12 or which specific days were to be excused, as well as being issued after the fact and could not have been the excuse the claimant professed to have had prior to the morning of February 12, the employer concluded that because the absences had not been properly reported nor were they documented as being excused, the claimant would be discharged.

The claimant did not establish that he in fact ever had a doctor's excuse prior to February 12. At the hearing he presented an undated doctor's excuse indicating the claimant was "off work 2/6, 2/7, 2/8, 2/9 and 2/12" which he obtained after the fact of his discharge and did not present to the employer. (Claimant's Exhibit A.)

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct, since they are not volitional. Cosper, supra. However, the health-related absence in this matter was not properly reported or documented, nor was an acceptable reason provided to excuse the failure to properly report and document the absence. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative’s March 22, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 13, 2007. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer’s account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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