

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT D HOUSKEN
24869 – 307th ST
LEHIGH IA 50557

OSCEOLA FOODS CORPORATION
C/o JON-JAY ASSOCIATES INC
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 06A-UI-05681-HT
OC: 05/07/06 R: 03
Claimant: Appellant (5-R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Robert Housken, filed an appeal from a decision dated May 23, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 12, 2006. The claimant participated on his own behalf. The employer, Osceola Foods, participated by Human Resources Manager Judy Callahan, Plant Controller Derrick Voth, and Cost Manager Bill Potts.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Robert Housken was employed by Osceola Foods

from January 24, 2000 until April 21, 2006. He was a full-time clerk working 4:00 a.m. until 1:30 p.m. The employer has a progressive disciplinary attendance procedure which assesses points for absences. A properly reported absence will be awarded one point and a no-call/no-show will be given seven points. An employee who accumulates nine points is subject to discharge.

The claimant was discharged in November 2005 for excessive unexcused absenteeism. The employer agreed to reinstate him because he had found a doctor willing to certify his illness retroactively. He met with his supervisor and Human Resources Manager Judy Callahan to sign a "letter of understanding," on December 12, 2005. It imposed additional requirements on Mr. Housken for properly reporting absences due to illness. In addition to calling in 30 minutes before the start of his shift, he was required to present a doctor's excuse to the employer within two days of any absence more than two days in length. Ms. Callahan read the letter to him and he was allowed to read it before he signed it. She notified him that failure to abide by the provisions of that agreement could subject him to discharge.

After the letter of understanding he was reinstated and accumulated four attendance points between December 2005 and April 11, 2006, which was his last day of work. After that date he was absent every day. He called in and left messages on the voice mail of Cost Manager Bill Potts, but did not speak with anyone directly. He did not provide a doctor's excuse and, in fact, did not seek medical attention at all until April 25, 2006.

The employer counted the absences against him because he did not provide the doctor's statements as required. As of April 21, 2006, he had accumulated 12 attendance points. He left a voice mail message for Ms. Callahan on April 25, 2006, and on that day he went to the doctor for the first time. The employer notified him by mail he had been separated from employment.

Mr. Housken filed a claim for unemployment benefits with an effective date of May 7, 2006, and has filed a weekly claim since then. However, he was hospitalized from June 12 through June 26, 2006.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 had been advised his job was in jeopardy as a result of his unexcused absenteeism. He was presented with a letter of understanding and counseled that failure to abide by the provisions of that agreement could lead to discharge. Mr. Housken may have been ill beginning April 12, 2006, and he did call in as required. But he had additional requirements imposed on him due to his past unexcused absenteeism with which he did not comply. He did not provide a doctor's statement to cover his absences and, indeed, did not even seek medical attention for over two weeks. He did not properly report his absences under the return to work agreement and they must therefore be considered unexcused. He was absent without excuse for eight days and accumulated a total of 12 absence points. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

The issue of whether the claimant was able and available for work during his hospital stay has not been determined.

DECISION:

The representative's decision of May 23, 2006, reference 01, is modified without effect. Robert Housken 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.

The matter of the claimant's availability for work for the time he was hospitalized is remanded to the Claims Section for determination.

bgh/pjs