

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

RAY A CONRAD
PO BOX 181
HEDRICK IA 52563

FIVE STAR INDUSTRIES INC
815 NEWBOLD DR
PO BOX 289
KNOXVILLE IA 50138

Appeal Number: 05A-UI-06263-HT
OC: 05/15/05 R: 03
Claimant: Respondent (1)

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 employer, Five Star Industries, Inc. (Five Star), filed an appeal from a decision dated June 6, 2005, reference 01. The decision allowed benefits to the claimant, Ray Conrad. After due notice was issued, a hearing was held by telephone conference call on July 1, 2005. The claimant participated on his own behalf. The employer participated by Supervisor Pat McQueen.

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: Ray Conrad was employed by Five Star from May 25, 2004, until May 17, 2005. He was a full-time welder.

The claimant received a written warning for absenteeism on his last day of work, which was Friday, May 13, 2005. He had missed 14 days since the beginning of his employment. Only a few of the absences had been covered by a doctor's statement as required by company policy.

Mr. Conrad's mother called in on Monday, May 16, 2005, to say he would not be in to work due to being "under doctor's care." He had seen a doctor that day for anxiety and had been given an injection, and prescribed other medication. The doctor's statement, never submitted to the employer or the judge, allegedly prohibited him from driving or operating any equipment until further notice. On May 17, 2005, the claimant again called in sick and was told by Supervisor Pat McQueen if he did not come in to work, he would be discharged. The employer felt the claimant had been abusing the sick leave. Mr. Conrad did not come in to work and was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

There is little doubt the claimant missed a great deal of work in the year he was employed. However, the final incident was an absence due to illness, which he did report in a timely manner to his supervisor. A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). There was no current, final act of misconduct that precipitated the discharge as required by 871 IAC 24.32(8), and disqualification may not be imposed.

DECISION:

The representative's decision of June 6, 2005, reference 01, is affirmed. Ray Conrad is qualified for benefits provided he is otherwise eligible.

bgh/kjw