

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW L WARD**  
Claimant

**APPEAL NO. 13A-UI-02704-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMAHA STANDARD INC**  
Employer

**OC: 01/27/13**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Omaha Standard, filed an appeal from a decision dated March 5, 2013, reference 01. The decision allowed benefits to the claimant, Andrew Ward. After due notice was issued, a hearing was held by telephone conference call on April 3, 2013. The claimant participated on his own behalf. The employer participated by Human Resources Manager Karen Biggs and was represented by TALX in the person of Tom Kuiper.

**ISSUE:**

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

**FINDINGS OF FACT:**

Andrew Ward was employed by Omaha Standard from January 14, 2011 until January 21, 2013 as a full-time assembler. The attendance policy had changed effective June 1, 2012, and the claimant received the updated policy at that time. The policy calls for discharge of employees who have accumulated 48 hours of unscheduled absences in a 12-month period. It also provides for five days of absence to be excused and not counted against the employee if the absence is excused with a doctor's statement. Only one unscheduled absence per month may be covered by accumulated vacation time.

Mr. Ward received a final written warning August 14, 2012, when he had accumulated more than 32 hours of unscheduled absence. He had used up all five of his allowable absences with a doctor's excuse by January 15, 2013. He called in absent the next three days attempting to use vacation to cover the missed hours. He had attempted to use vacation because he had not carefully read the new attendance policy but was ill and knew he had no more days he could have excused with a doctor's statement.

The employer reviewed his attendance records and discharged him on January 21, 2013.

**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.

The claimant did violate a known company rule by using three days of vacation in one month for unscheduled absences. The absences were due to illness and were properly reported. Although the employer does not excuse such absences it cannot be considered misconduct. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). There is no evidence the claimant was not, in fact, ill, and the employer has failed to meet its burden of proof. Benefits are allowed.

**DECISION:**

The representative's decision of March 5, 2013, reference 01, is affirmed. Andrew Ward is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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