

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAY D BOSMA
Claimant

APPEAL NO. 07A-UI-08787-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
CURRIES-GRAHAM
Employer

OC: 08/12/07 R: 02
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jay Bosma, filed an appeal from a decision dated September 6, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 1, 2007. The claimant participated on his own behalf. The employer, Curries-Graham, participated by Human Resources Director Mark Evers.

ISSUE:

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

FINDINGS OF FACT:

Jay Bosma was employed by Curries-Graham from June 10, 2004 until August 9, 2007, as a full-time production worker. He received three levels of discipline on Friday, July 20, 2007, because he had been absent on Tuesday and Wednesday without a doctor's excuse, and was no-call/no-show on Thursday. He served a three-day suspension July 20, 23, and 24, 2007, as the last stage of discipline. The written notice informed him the next step would be discharge.

On August 8 and 9, 2007, he was again no-call/no-show to work. The claimant had received a copy of the employee handbook and knew he had to call before the start of his shift. He had moved and made no arrangements to have a phone in order to call in any absences. After being no-call/no-show on August 8, 2007, he did not call or come in because he believed he had already been fired.

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.

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 absenteeism. Even though he had been warned for being no-call/no-show to work he made no attempt to obtain a phone of any type so he could call in when he was absent. He may have been ill or otherwise incapacitated but a failure to properly notify the employer of an absence, even one for illness, is considered unexcused. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of September 6, 2007, reference 01, is affirmed. Jay Bosma is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs