

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E ROUTH
Claimant

APPEAL NO. 07A-UI-06611-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

**OC: 06/10/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 29, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 25, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Jay Smith, attorney at law. Brenda Ruhrer participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a production laborer for the employer from November 17, 2001, to June 7, 2007. He was informed and understood that under the employer's work rules, employees were required to notify the employer 30 minutes before the start of their shift if they were not able to work as scheduled and were subject to termination for three absences without proper notice during a 12-month period.

The claimant was absent without notice on September 16, 2006, and May 2, 2007. He received a final warning after his absence on May 2. He was informed on May 4, 2007, that if he had another no-call, no-show before September 16, 2007, he would be discharged.

The claimant was scheduled work at 7:00 a.m. on June 8, 2007. He overslept and was absent from work. He did not call in to notify the employer that he would not be at work. At about 7:30 a.m., a coworker called the claimant and asked whether he planned on reporting to work that day. He told a coworker that he did not plan to come in that day.

On June 11, 2007, the employer discharged the claimant for violating the rule requiring employees to call in 30 minutes before the start of their shift and the policy providing for termination after three violations in a 12-month period.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He had received a warning that his job was in jeopardy due to his absences without proper notification to the employer. Despite that warning, the claimant was absent from work without notice or legitimate excuse on June 8. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated June 29, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw