

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

JAMES L KNOPICK
1511 ISABELLA ST
SIOUX CITY IA 51103

WELLS DAIRY INC
PO BOX 1310
LEMARS IA 51031-1310

Appeal Number: 06A-UI-06501-HT
OC: 05/14/06 R: 01
Claimant: Appellant (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 claimant, James Knopick, filed an appeal from a decision dated June 15, 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 26, 2006. The claimant participated on his own behalf. The employer, Wells Dairy, participated by OC Specialist Tiffany Millikan and Production Supervisor Dan Ahrendson.

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: James Knopick was employed by Wells Dairy from

April 4, 2005 until May 16, 2006. He was a full-time production technician. At the time of hire the claimant received a copy of the employee handbook which set out the attendance policy. Each employee begins with 60 points and points are deducted for any attendance incidents. An entire day of absence or a no-call/no-show has ten points deducted, and tardiness is assessed at three or five points depending on whether it is less than one hour or more than one hour. Employees earn ten points for every month they have perfect attendance but will be discharged if the total reaches zero.

Mr. Knopick was counseled in March 2006 by OC Specialist Tiffany Millikan about his point total. He insisted he had more points which had not been credited to his account and Ms. Millikan checked into the matter. She discovered he was correct and he was credited with ten points. However, on April 30, 2006, he had reached a level of five points and was counseled again by the employer.

After that counseling he was tardy on May 1, 2006, and no-call/no-show to work on May 2, 2006. Employees may either talk to their supervisor or report the absence to a phone line used for that purpose. He did call in absent every other day until again being no-call/no-show on May 15, 2006. He spoke with Ms. Millikan on May 16, 2006, and she told him there was no record of him calling in either on May 2 or May 15, 2006. She arranged for him to call Production Supervisor Dan Ahrendson at 11:30 a.m. on May 17, 2006, to discuss the matter. He had said he might be able to come in and meet personally with him and to provide a doctor's excuse, but he did not call or appear or otherwise contact the supervisor at the time arranged. He was notified by certified mail that he was discharged.

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 attendance point level approaching zero. After the final counseling he was tardy to work once and then no-call/no-show to work on two occasions. He did not properly report his absences and therefore, even if they were due to illness, cannot be excused. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Mr. Knopick was given the opportunity to talk with the production supervisor and provide the doctor's note he said he had, but failed to appear at the time and date agreed upon. He did not properly report his absences nor provide proper documentation excusing them and 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 June 15, 2006, reference 01, is affirmed. James Knopick is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/pjs