

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E HARRISON
Claimant

APPEAL NO. 08A-UI-00507-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES DRAKE & ASSOCIATES
Employer

OC: 12/16/07 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Charles Drake and Associates (Drake and Associates), filed an appeal from a decision dated January 7, 2008, reference 01. The decision allowed benefits to the claimant, David Harrison. After due notice was issued a hearing was held by telephone conference call on January 30, 2008. The claimant participated on his own behalf. The employer participated by Owner Charles Drake. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

David Harrison was employed by Drake and Associates from November 8 until December 17, 2007. He was assigned to Electrical Power Products for an indefinite period of time.

Mr. Harrison missed work on December 5, due to illness, and December 11 and 12, 2007, because of an ice storm. He injured his back at home on December 14, 2007, and called the client company, but not the employer, to report his absence. He called in again on December 17, 2007, this time to Drake and Associates. The client company requested his removal from the assignment because of absenteeism and Mr. Harrison was notified by Kendra Hughes he was discharged from Drake and Associates.

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 missed five days in a period of less than six weeks. Three were due to illness, including the final incident. The final absence was properly reported to the employer as required. To be disqualified from receiving unemployment benefits the claimant must be discharged for a current, final act of misconduct under 871 IAC 24.32(8). A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Because there was no final act of misconduct, disqualification may not be imposed.

DECISION:

The representative's decision of January 7, 2008, reference 01, is affirmed. David Harrison is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs