

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY L BROCKERT**  
Claimant

**APPEAL NO. 09A-UI-19048-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**OC: 11/29/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated December 18, 2009, reference 01, , which denied unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 1, 2010. The claimant participated personally. Although duly notified, there was no participation by the employer.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: The claimant was employed by Schenker Logistics Inc. from September 2009 until November 19, 2009 when he was discharged from employment. Mr. Brockert was employed as a full-time forklift driver and was paid by the hour. His immediate supervisor was Ken Dixie.

Mr. Brockert was discharged after he was unable to report for scheduled work on November 19, 2009 when he was sick and under a doctor's care. The claimant provided notification to the employer of his impending absence but nonetheless was discharged from employment. Mr. Brockert provided medical documentation supporting his need to be absent for medical reasons. (See Exhibit One).

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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 employer bears the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant an employer to discharge an employee may not be necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa 1992).

The Supreme Court in the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of misconduct. The Court held that the absenteeism must both be excessive and unexcused. The Court further held, however, that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

The evidence in the record establishes that Mr. Brockert did provide notification to the employer as required and supplied medical documentation to support his need to be absent for medical reasons. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated December 18, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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