

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES W HESLINGA
Claimant

APPEAL NO. 09A-UI-04026-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**"KLK HOLDINGS INC
"INSYNC SALES & MARKETING**
Employer

**OC: 02/08/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 3, 2009, reference 01, which denied benefits based upon his separation from Insync Sales & Marketing. After due notice a telephone conference hearing was scheduled for and held on April 8, 2009. Mr. Heslinga participated personally. The employer participated by Ms. Debbie Rodgers, Human Resources Manager and Mr. Mark Greve, Plant Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by Insync Sales & Marketing from August 11, 2008 until September 19, 2008 when he was discharged from employment. Mr. Heslinga held the position of full-time screen printer and was paid by the hour. His supervisor was the plant manager, Mark Greve.

The claimant was discharged after he failed to report for scheduled work on Friday, September 19, 2008. Mr. Heslinga called in that morning indicating that he was not reporting to work as he had a "job interview." The claimant believed that he spoke to Mark Greve, the plant manager. Later that morning the claimant was contacted by Anthony Payole, the company's Director of Operations. During the telephone conversation the claimant was reminded that his attendance had not been good. The conversation ended with the Director of Operations stating "It is best for us to part ways." Mr. Heslinga reasonably concluded that he had been discharged from employment based upon the Director of Operations' statement and, therefore, did not attempt to report for work the following work day, Monday, September 22, 2009 or thereafter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. The claimant was separated from his employment based upon a telephone call that was placed to him on the morning of September 19, 2008 by the company's Director of Operations. During the telephone conversation, the Director of Operations stated that it was best for the parties to "part ways." The claimant reasonably interpreted this statement as indicating that he had been discharged from employment. Mr. Heslinga testified that he had called in earlier that morning to report his impending absence and had spoken with the plant manager, Mr. Greve. The claimant testified that at that time he did not indicate he was quitting his job but merely taking the day off to go to a job interview.

The employer contends that Mr. Heslinga did not call in on the morning of September 19. Mr. Greve, the company's plant manager, does not "recall" speaking to the claimant that morning. The evidence is undisputed that prior to September 19, 2008, the claimant had not been discharged from employment but that he had been replaced in his job position of screen printer by a new worker. The Supreme Court of Iowa indicates Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of misconduct. The Court held that the absences must both be excessive and unexcused. The evidence in the record establishes that the claimant had missed three and one-half days of work during the time that he was employed by the company. There is no evidence in the record that the absences had not been excused or properly reported by Mr. Heslinga.

The Supreme Court of Iowa in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence does not constitute misconduct even in the case where an employee had been specifically instructed to notify his employer that day. The administrative law judge concludes based upon the evidence in the record a single unreported and unexcused absence on September 19, 2008 did not constitute misconduct sufficient to warrant a denial of 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.

DECISION:

The representative's decision dated March 3, 2009, reference 01, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs