

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN J RUTH
Claimant

APPEAL NO: 09A-UI-06689-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASTORIA INDUSTRIES OF IOWA INC
Employer

OC: 04/05/09

Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Astoria Industries of Iowa, Inc. (employer)) appealed a representative's April 29, 2009 decision (reference 01) that concluded Allen J. Ruth (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2009. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Tiffany Phillips appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 4, 2008. He worked full time as a general laborer in the employer's fiberglass service body manufacturing facility. His regular schedule was 6:00 a.m. to 2:30 p.m., Monday through Friday. His last day of work was August 20, 2008. The employer discharged him on August 22, 2008. The reason asserted for the discharge was excessive absenteeism.

During the claimant's employment he incurred at least nine absences. While about four of them were called in as due to illness, at least two others were for personal issues, and for at least three had been a no-call/no-show. He had been given verbal warnings in March and April. On July 14, 2008 he was given a suspension and final warning that one more unexcused absence would result in discharge.

On August 21 the claimant was a no-call/no-show for work. When he attempted to report for work on August 22, he provided no explanation for the absence or why he had not called in. As a result of this final absence, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective April 5, 2009. The claimant has received no unemployment insurance benefits since the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Excessive absences are not considered misconduct unless unexcused. 871 IAC 24.32(7). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. Cosper, supra. The claimant's final absence was not shown to be due to illness or other reasonable grounds, and it was not properly reported, nor was an acceptable reason provided to excuse the failure to properly report the absence. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 29, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 22, 2008. This disqualification continues until

he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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