

**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**

**KYLE E HAMLIN
12319 COUNTY RD W66
COLUMBUS JUNCTION IA 52738**

**CURRY'S BACKHOE SERVICE INC
9914 COUNTY RD G44X
MUSCATINE IA 52761**

**Appeal Number: 06A-UI-02185-SWT
OC: 01/22/06 R: 04
Claimant: Appellant (5)**

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 appealed an unemployment insurance decision dated February 9, 2006, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 13, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Tim Kelly. Jason Curry participated in the hearing on behalf of the employer with witnesses, Hope Curry, Jeff Rinnert, and Jerry Hafner.

FINDINGS OF FACT:

The claimant worked full time for the employer as a driver from June 1, 2005, to January 16, 2006. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant had been warned about missing work without calling on October 31, 2005.

The employer discharged the claimant on January 20, 2006, because he had been leaving work early to attend therapy sessions but was not going to therapy and because he was absent from work without notifying the employer on January 18, 19, 20. The claimant was absent because his vehicle was out of gas and he did not call because he did not have a phone at his residence.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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).

The claimant's leaving work early to attend therapy and then not attending therapy sessions and his absences from work without notice to the employer were willful and material breaches of his duties and obligations to the employer and substantially disregarded the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated February 9, 2006, reference 01, is modified with no change in the outcome of the case. The claimant was discharged for work-connected misconduct. He is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/kkf