

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT W ROGGEVEEN
Claimant

APPEAL NO. 07A-UI-06501-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIGGS CORPORATION
Employer

**OC: 05/27/07 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Briggs, filed an appeal from a decision dated June 20, 2007, reference 01. The decision allowed benefits to the claimant, Robert Roggeveen. After due notice was issued, a hearing was held by telephone conference call on July 17, 2007. The claimant participated on his own behalf. The employer participated by Human Resources Manager Deb Nordaas and Manager of Inside Sales Ruth Yazel.

ISSUE:

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

FINDINGS OF FACT:

Robert Roggeveen was employed by Briggs from September 11, 2006 until May 24, 2007, as a full-time account manager. He began receiving progressive discipline for absenteeism on April 16, 2007, when he was given a verbal warning by Manager of Inside Sales Ruth Yazel. He had reached a four percent absenteeism rate in that quarter. As part of the disciplinary plan every week he was to submit a schedule to Ms. Yazel of the hours he would work for the next week.

A written warning was given to him on April 20, 2007, when he did not work the hours to which he had committed himself. The third step of the progressive discipline was a decision-making day on May 4, 2007, at which time he committed himself to working the hours he was scheduled and to notify Ms. Yazel if he would be absent or tardy.

On May 23, 2007, Mr. Roggeveen was 23 minutes late for work and left 56 minutes early, both without notification to or permission from Ms. Yazel, due to childcare problems. The majority of his absences and tardiness was for this same reason with one or two exceptions such as the dog getting loose or spilling food on his clothing. The claimant was discharged on May 24, 2007, by Ms. Yazel and Human Resources Manager Deb Nordaas. For the period beginning

January 1, 2007, through May 24, 2007, the claimant had worked all his scheduled hours for only three of the two-week pay periods.

Robert Roggeveen has received unemployment benefits since filing a claim with an effective date of May 27, 2007.

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 had been advised his job was in jeopardy as a result of his absenteeism. In spite of the progressive discipline Mr. Roggeveen did not improve his attendance, or notify his supervisor when he would be late or absent as he had agreed to do. Matters of purely personal consideration, such as lack of childcare, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant was fired for excessive, unexcused

absenteeism and under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 20, 2007, reference 01, is reversed. Robert Roggeveen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$2,338.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css