

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

SCOTT L WENGERT
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BURKE MARKETING CORPORATION
PO BOX 209
NEVADA IA 50201

Appeal Number: 04A-UI-09229-HT
OC: 08/08/04 R: 02
Claimant: Appellant (1)

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, Scott Wengert, filed an appeal from a decision dated August 27, 2004, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 20, 2004. The claimant participated on his own behalf. The employer, Burke Marketing Corporation (Burke), participated by Senior Human Resources Clerk Pat Waltemeyer and Supervisor Randy Collings.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Scott Wengert was employed by Burke from February 1, 2000 until August 4, 2004. He was a full-time spice technician working 4:00 p.m. until 2:00 a.m. Throughout the course of his employment the claimant had received numerous warnings regarding attendance, and at least two disciplinary suspensions. His last warning was on July 27, 2004, and Supervisor Randy Collings notified him he had 3.5 points on his record, and reminded him discharge could occur when he reached 4 points.

On July 30, 2004, the claimant reported for work for about 17 minutes before clocking out. He left a voice mail message for Mr. Collings, at a phone where he was not working, but made no further attempt to get permission to go home early. He had a rash on his hands, which had developed several days before. He thought it might be work related but never talked to his supervisor or the human resources department in attempt to request time off to be seen by a doctor to determine if restrictions should be imposed.

After leaving without permission on Friday, July 30, 2004, the claimant was absent from work on August 2 and 3, 2004, leaving messages once again. He had a doctor's appointment on August 3, 2004, and returned to work on August 4, 2004. Human Resources Manager Dorothy Sally notified him he had exceeded the allowable points on July 30, 2004, when he left early without permission, and was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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, (7) provide:

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).

(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 excessive absenteeism. The final occurrence was when he left early without first receiving permission from his supervisor or consulting with anyone in human resources prior to leaving work. This makes the leaving before the end of his shift without permission to be an improperly reported absence. While he may have had a rash on his hands, this does not constitute an emergency and there is nothing in the record to establish why he could not have waited to talk directly to someone in authority about taking the time off in order to have the problem dealt with, rather than leaving without permission and without notice. Although he may have had a note from his doctor when he returned on August 4, 2004, the issue misconduct and unexcused absence was the result of his failure to receive permission to leave early after he had clocked in for his shift.

If this were an isolated incident, it would not rise to the level of misconduct. However, the claimant has a substantial history of disciplinary action for absenteeism and this final incident, in conjunction with his prior record, is sufficient to rise to the level of excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of August 27, 2004, reference 02, is affirmed. Scott Wengert is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf