

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY F OVERBECK**  
Claimant

**APPEAL NO. 13A-UI-11850-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA MOLD TOOLING CO INC**  
Employer

**OC: 04/21/13  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Gary Overbeck, filed an appeal from a decision dated October 16, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 14, 2013. The claimant participated on his own behalf. The employer, Iowa Mold Tooling, participated by Human Resources Administrator Dawn Gamerdinger and Human Resources Manager Lynne Swanson.

**ISSUE:**

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

**FINDINGS OF FACT:**

Gary Overbeck was employed by Iowa Mold Tooling from December 2, 1996 until September 17, 2013 as a full-time welder. He had been approved for periodic family medical leave (FML) in January 2013 to care for his wife. His last day of work was July 25, 2013. He called in absent after that, leaving messages on the company call-in system he was taking FML.

The employer has a third-party company, FMLA Source, which tracks the employees taking FML. On August 22, 2013, FMLA Source notified Iowa Mold Tooling Mr. Overbeck had used all of his available FML as of August 8, 2013. On that day he had been notified his hours had expired. On August 13, 2013, the third-party company again informed the claimant his hours had expired and he should contact the employer's human resources department. Instead of contacting the employer as instructed Mr. Overbeck simply continued calling in every day stating he was taking FML.

The employer began an investigation into the matter, reviewing the FML approval and reviewing the daily call ins. Human Resources Manager Lynne Swanson held a meeting with the claimant present as well as his supervisor and representatives from the collective bargaining unit at the

plant. The claimant acknowledged at that meeting he had been told he had no more FML hours available and also being told he should contact the human resources department. He admitted he did not do so because he “forgot” although he admitted he did not forget to call the employer each day claiming FML even though he did not have any hours left.

**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.

The claimant falsified the reason for his absence when he called in absent each work day as of August 8, 2013. He could not provide any adequate explanation as to why he continued to claim FML approved time off when he knew full well he had no hours remaining. Nor could he provide an explanation as to why he did not take the advice of the third-party company to contact Iowa Mold Tooling’s human resources department to apply for some type of time off.

The employer has the right to expect honesty from its employees. The claimant continued to claim FML when he knew full well he had no more hours to claim. The falsification of reporting the time off, as well as being absent without approval after August 8, 2013, is a violation of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of October 16, 2013, reference 01, is affirmed. Gary Overbeck is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs