

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN D OLSON**  
Claimant

**APPEAL NO. 11A-UI-10064-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI DRAIN CORP**  
Employer

**OC: 06/19/11  
Claimant: Appellant (1)**

Section 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

The claimant, Kevin Olson, filed an appeal from a decision dated July 26, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 25, 2011. The claimant participated on his own behalf.

Iowa Legal Aid entered an appearance on behalf of the claimant but did not provide a telephone number where a representative could be contacted. The claimant provided one phone number at the time of the hearing which, when dialed, was a fax machine. The other number the claimant provided to contact his representative was the fax number for the Iowa Workforce Development Appeals Section. No one on behalf of Iowa Legal Aid contacted the Appeals Section during the hearing and requested to participate.

The employer, Agri Drain, participated by Human Resources Generalist Kris Stringham, Vice President of Operations Kim Wedemeyer and was represented by James Gilliam.

**ISSUE:**

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

**FINDINGS OF FACT:**

Kevin Olson was employed by Agri Drain from September 7, 2010 until June 16, 2011 as a full-time production worker. His last day of work was March 25, 2011. He went on short-term disability March 31, 2011, for a non-work-related knee injury. The disability was approved through June 11, 2011, and the employer sent him a letter to inform him he must contact the human resources office on the 1st and 15th of every month with an update on his medical condition. He only called on April 23 and May 7, 2011.

The short-term disability ended Saturday, June 11, 2011, and he was expected to return to work on Monday, June 13, 2011. He was no-call/no-show on June 13, 14 and 15, 2011. On June 16, 2011, he was sent a letter notifying him his employment had ended, and he received

that on June 17, 2011. That day he contacted Vice President of Operations Kim Wedemeyer and she informed him his employment had ended for being no-call/no-show after his leave of absence ended.

The claimant later had the insurance company retroactively approve his leave until June 20, 2011, but that occurred after his employment had already ended.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 was discharged for absenteeism. He was to return to work June 13, 2011, but failed to do so. He also did not abide by the requirements the employer imposed to contact the company the 1st and 15th of every month during his leave to give an update on his medical condition. The employer has the right to expect employees to abide by reasonable instructions

and procedures, which includes notification of any absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

**DECISION:**

The representative's decision of July 26, 2011, reference 01, is affirmed. Kevin Olson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, 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