

**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**

**DAVID L BROWN
5906 HICKMAN RD #3
DES MOINES IA 50322**

**DEERE & COMPANY
DES MOINES WORKS
PO BOX 1595
DES MOINES IA 50306**

**Appeal Number: 04A-UI-00134-HT
OC: 12/07/03 R: 02
Claimant: Respondent (2)**

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
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Deere & Company (Deere), filed an appeal from a decision dated January 2, 2004, reference 01. The decision allowed benefits to the claimant, David Brown. After due notice was issued a hearing was held by telephone conference call on January 27, 2004. The claimant participated on his own behalf. The employer participated by Supervisor of Industrial Relations Frank Wright.

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: David Brown was employed by Deere from August 12, 2002 until May 12, 2003. He was a full-time welder.

The claimant was absent from work from April 29 through May 13, 2003, for a total of 11 work days. He returned on May 14, 2003, with a note from his doctor releasing him to return to work. Supervisor of Industrial Relations Frank Wright had already sent a letter to Mr. Brown on May 12, 2003, notifying him that he was considered a voluntary quit for being absent April 29, 30, and May 1, 2003, without a proper excuse. At a meeting on May 14, 2003, the claimant was told that the note he presented from his doctor was dated May 13, 2003, but excusing him retroactively until April 29, 2003. Mr. Wright informed him that post dated notes were not acceptable, but he would be excused if he could present a statement and/or records from his doctor verifying that he had been treated as early as April 29, 2003. The claimant never provided the information.

David Brown has received unemployment benefits since filing a claim with an effective date of December 7, 2003.

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 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).

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 absent without a proper doctor's excuse for 11 days. The employer did advise him that he would be excused if he could provide documentation from his physician that he had been treated at the beginning of this period. The note dated May 13, 2003, only stated he had been "under doctor's care" but dated at the end of the absence period and did not provide verification of the date he was first examined and diagnosed. Mr. Brown did not indicate why he did not avail himself of the opportunity provided by Deere to return to the doctor for the necessary documentation. The absences were therefore not properly excused under the employer's policy and the claimant's absences were excessive. Under the provisions of the above Administrative Code section 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 January 2, 2004, reference 01, is reversed. David Brown 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 \$1,800.00.

bgh/kjf