

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL J STERN**  
Claimant

**APPEAL NO. 17A-UI-09189-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASTERBRAND CABINETS INC**  
Employer

**OC: 08/13/17**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Masterbrand Cabinets (employer) appealed a representative's August 29, 2017, decision (reference 01) that concluded Daniel Stern (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 26, 2017. The claimant participated personally. The employer participated by Stephanie Moseley, Senior Human Resources Generalist. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 27, 2017, as a full-time machine operator. The claimant signed for receipt of the employer's handbook on March 27 and May 1, 2017. The handbook states that the "accumulation of three written warnings in any combination and for any reason during any twelve month period will result in the termination of employment".

On June 11, 2017, the claimant was issued a conduct review for failure to punch the time clock on April 5, 10, and May 14, 2017. The employer notified him he would receive a written warning if he missed five punches. The claimant was tardy for work on March 31, April 5, 9, June 8, 25, and July 10, 2017. He properly reported his absence due to illness on June 18, 2017. The employer issued him written warnings on July 5 and 18, 2017. The employer notified the claimant that three written warnings of any kind within a year would result in termination from employment.

On July 19, 2017, the claimant arrived at work without his badge for the fifth time. On July 25, 2017, a third warning and termination was issued to the claimant.

The claimant filed for unemployment insurance benefits with an effective date of August 13, 2017. He has received no benefits since his separation from employment. The employer participated personally at the fact finding interview on August 28, 2017, by Stephanie Moseley.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. In the four months he worked for the employer, he was repeatedly late for work and did not bring his badge with him. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's August 29, 2017, decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs