

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES JOHNSON**  
Claimant

**APPEAL NO. 07A-UI-03379-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENSCRAFTERS INC**  
Employer

**OC: 02-18-07 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 22, 2007, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 7, 2007. The claimant participated in the hearing. Amanda Atnip, Regional Team Lead and Kevin Rafferty, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time optical team member for Lenscrafters from February 10, 2005 to November 7, 2006. Around the beginning of October 2006 the claimant asked his manager for November 3, 4 and 5, 2006, off work so he could attend a medical appointment in Minnesota. The manager said it should not be a problem but he would have to see what his own schedule was before giving the claimant a definitive answer. The claimant and manager were the only two employees at that store so worked opposite shifts and usually communicated through notes. The claimant did not hear anymore about his request until one or two days before he was scheduled to leave when he was told he could not go. The claimant believed he had to attend his appointment and went despite the manager's decision that he could not go. When he returned from Minnesota he had a voicemail message from his manager stating he would see him when he picked up his final check and the employer terminated his employment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant had a doctor's appointment scheduled in Minnesota. He asked for the time off a month in advance but his manager failed to give him a definite answer before telling him he could not have the time off the day before he was scheduled to leave. Under these circumstances the manager had a responsibility to notify the claimant of his decision in a timely manner and it was not unreasonable for the claimant to leave for his appointment despite the manager telling him he could not go. The claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The March 22, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css