

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PRESTON G HOPKINS**  
Claimant

**APPEAL NO. 12A-UI-00841-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RELCO LOCOMOTIVES INC**  
Employer

**OC: 12/18/11  
Claimant: Appellant (3)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated January 18, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on February 16, 2012. Claimant participated personally. The employer participated by Ms. Christy Lovstuen, Human Resource Manager and Mr. Tom Shipp, Production Supervisor. Claimant's Exhibit One was received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Preston Hopkins was employed by Relco Locomotives Inc. from June 13, 2011 until he was discharged on December 21, 2011 for exceeding the permissible number of attendance infractions under established company policy. Mr. Hopkins worked as a full-time mechanic and was paid by the hour. His immediate supervisor was Mr. Tom Shipp.

Mr. Hopkins was discharged from Relco Locomotives Inc. after he exceeded the permissible number of attendance infractions allowed under company policy. The claimant was aware of the policy and had been verbally warned prior to being discharged. The final incident that caused the claimant to exceed the permissible number of attendance infraction points took place when the claimant failed to report or provide required notification to the employer of impending absences on December 20 and 21, 2011.

The claimant had not secured advance permission from his immediate supervisor to be absent those days and had not called in as required by company policy. Mr. Hopkins was aware of the requirement that he call in each day to report his impending absences. The employer went to the extra length of attempting to contact Mr. Hopkins by telephone prior to discharge, however Mr. Hopkins did not return the call. During a discharge meeting Mr. Hopkins was given an

opportunity to provide any extenuating circumstances that caused him to be absent and failed to provide notification. The claimant declined to do so.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that excessive unexcused absenteeism is one form of job misconduct. The Court held that the absences must be both excessive and unexcused.

The evidence in the record establishes that Mr. Hopkins was aware of the company attendance policy and had been warned prior to being discharged. Although he was aware that he was required to give advance notice to the employer of impending absences the claimant did not do

so on December 20 and 21, 2011 and although given the opportunity to provide information on extenuating circumstances regarding the absences the claimant declined to do so.

No contract for employment is more basic than the right of an employer to expect employees will appear for work on the hour and day agreed upon. A current failure to honor that obligation shows a willful disregard for the employer's interests and standards of behavior that the employer has a reasonable right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated January 18, 2012, reference 01, is affirmed as modified. The claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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