

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD J HANUS
Claimant

APPEAL NO. 13A-UI-08961-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**VERMEER MANUFACTURING COMPANY
INC**
Employer

**OC: 06/30/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 23, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was scheduled for September 9, 2013. The claimant did not supply a telephone number where he could be reached for the hearing. The employer participated by Ms. Becky Fowler, Human Resource Business Partner. Based upon the claimant's failure to participate in the hearing, the administrative file and the record, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

The issue in this matter is whether the representative's decision should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

Mr. Hanus was employed by Vermeer Manufacturing Company from July 5, 2011 until June 20, 2013 when he was discharged for violation of company policy. Mr. Hanus was employed as a full-time production worker on the company's third shift and was paid by the hour.

The claimant was discharged after he failed to report for work or provide proper notification on June 18, 2013. Under company policy, employees who have been suspended are subject to discharge if they receive a number of official warnings from the company within a 12-month period. Mr. Hanus had been suspended April 2013 and his failure to report or provide notification on June 18 resulted in a warning. Because the warning was received within 12 rolling months of the suspension the claimant had previously received while employed by the company, he was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

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.

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 administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in the case is correct and should be affirmed. The claimant was aware of the company policy and was discharged after he received a warning within a 12-month period of receiving a suspension from work from the company.

DECISION:

The unemployment insurance decision dated July 23, 2013, reference 01, is affirmed. The representative's decision remains in effect. 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.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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