

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

JOHN W BERANEK
109 S LOCUST AVE
PRAIRIEBURG IA 52219

THEISENS INC
4949 CHAVENELLE RD
DUBUQUE IA 52002-2630

Appeal Number: 04A-UI-02036-DWT
OC 01/11/04 R 03
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 are 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

STATEMENT OF THE CASE:

Theisens, Inc. (employer) appealed a representative's February 20, 2004 decision (reference 02) that concluded John W. Beranek (claimant) was qualified to receive unemployment insurance benefits, and the employer's account is subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 15, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Cindy Burdt, the director of human resources, appeared on the employer's behalf. During the hearing, Employer's Exhibit One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 29, 2003. The employer hired the claimant to work full time and do basic automotive work.

On June 24, 2003, the claimant left work early. The employer told him to call if he was going to be late coming back to work. The claimant did not return to work or call the employer. The employer gave the claimant a written warning the next day and told him further disciplinary action would be taken if he continued to be absent from work as scheduled or failed to properly notify the employer of his absence. The claimant indicated he would call the next time.

On June 27, the claimant was scheduled to work at noon. The claimant's father notified the employer that the claimant had a chiropractor's appointment and would be late for work. The claimant, however, did not report to work at all on June 27 and he did not again contact the employer. The claimant was scheduled to work on June 28 and 29. He did not call or report to work on these days. On June 30, 2003, the claimant reported to work at his scheduled time. He gave the employer a doctor's statement verifying he was unable to work June 27, 28, and 29.

The employer discharged the claimant because he failed to properly notify the employer about his inability to work as scheduled these days. The claimant established a claim for unemployment insurance benefits during the week of January 11, 2004. The claimant has not received any benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy if he failed to properly notify the employer when he was unable to work as scheduled. The claimant's failure to contact the employer on June 27, 28 and 29 shows an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. As of January 11, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 20, 2004 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 11, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf