

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK J CLARK
Claimant

APPEAL NO. 06A-UI-10765-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATRIX METALS LLC
Employer

**OC: 10/08/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 2, 2006, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 21, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Linda Leffler participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a machine operator for the employer from August 7, 1990, to October 10, 2006. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer before the start of their shift if they were not able to work as scheduled. The claimant had a history of absenteeism for which he had received discipline. He had received a final written warning on April 10, 2006, after he failed to report to work as scheduled at 6:00 a.m. on April 7 and failed to call in until 10:50 a.m. to report his absence. He was told that he would be discharged for any unexcused absence in the next six months.

On October 5, 2006, the claimant did not report to work as scheduled at 6:00 a.m. and he did not call in until 10:43 a.m. He was suffering with a migraine and had overslept. The employer discharged the claimant on October 10, 2006, for excessive unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He may have had a legitimate reason for missing work, but he did not have a valid reason for not calling in properly, especially since he had received his final warning for exactly the same conduct. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 2, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs