

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

JAMES WALLACE  
1500 SOUTH SHORE DR #43  
CLEAR LAKE IA 50428

WINNEBAGO INDUSTRIES  
PO BOX 152  
FOREST CITY IA 50436

Appeal Number: 04A-UI-00884-ET  
OC: 12-14-03 R: 02  
Claimant: Appellant (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, 4<sup>th</sup> 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 is 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 12, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 12, 2004. The claimant participated in the hearing. Gary McCarthy, Personnel Supervisor, participated in the hearing on behalf of the employer.

#### 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 advanced assembler for Winnebago Industries from December 28, 1994 to December 12, 2003. On December 9, 2003, the claimant called the employer and reported he would not be in because he was ill. He did not call the employer December 10, 11 and 12, 2003. On December 15, 2003, the claimant reported to work and provided a doctor's excuse dated December 12, 2003, stating the claimant had missed work since December 9, 2003 because of illness and that he was released to return to work December 15, 2003. The employer's policy states that three consecutive no-call/no-shows are considered a voluntary quit. The claimant testified he believed he only had to call the first day of his absence. The claimant took a leave of absence from March 17, 2003 to March 21, 2003, and was only required to call March 17 because he submitted paperwork for the leave of absence. He was also absent December 1, 2 and 3, 2003, for family leave and again only had to call the first day of his absence because he provided the proper paperwork and was granted leave time.

#### 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 job 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant violated the employer's attendance policy by failing to call and report his absences December 10, 11 and 12, 2003, after notifying the employer he was ill and would not be at work December 9, 2003. While the claimant should have known that calling the first day of an absence does not constitute proper reporting of a four-day absence, he may have been confused by the fact the employer's policy only requires employees to call in on the first day of an approved leave of absence, a procedure the claimant had complied with twice in the past year. The claimant did provide a doctor's excuse to the employer when he returned to work December 15, 2003, which demonstrates his absence was due to a legitimate illness. For the above-stated reasons, the administrative law judge concludes the claimant's failure to continue to report his absence after calling in December 9, 2003, was not an intentional act of misconduct and, consequently, his actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

#### DECISION:

The January 12, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b