

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY P MARTINSON**  
Claimant

**APPEAL NO. 09A-UI-04016-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA TRENCHLESS LLC**  
Employer

**Original Claim: 01/04/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated March 6, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 8, 2009. The claimant participated personally. The employer participated by Renea Gasche, Corporate Secretary, and Jason Clark, Owner. Exhibits One, pages 1- 21, was admitted into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct.

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant was discharged on February 5, 2009. The claimant was a truck driver and laborer. He was working with a crew out of state in February 2009. The claimant was given a company credit card that was to be used for company purchases only. The claimant used the credit card to rent a car and purchase gas for a trip from Casa Grande, Arizona, to Las Vegas, Nevada, on January 30 through February 2, 2009. The claimant asked a coworker if he could rent the car with the credit card and was told it was ok. The claimant did not contact the owner. On November 10, 2008, the claimant signed a statement acknowledging that the credit card was to be used for company expenses only. The claimant was a no-call/no-show for three days, February 3, 4, and 5, 2009. The supervisor on site knew where the claimant was staying. The employer has a written policy, which the claimant received, stating three days' no-call/no-show is deemed a quit.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. The claimant did not call in. The fact that his supervisor knew his location is not the same as reporting for work. The claimant had been warned on November 24, 2008 and January 8, 2009 that he was violating the company no-call/no-show policy and that he could be terminated for further violations.

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 claimant had not been authorized by the employer to purchase gas for the rental car for his trip to Las Vegas. There was nothing in past practices that indicated such purchases would be approved. Even if the claimant thought he had permission to use the credit card to rent the car, he had no authorization to use it to purchase gas for his trip to Las Vegas. The claimant committed misconduct with the unauthorized use of the credit card.

**DECISION:**

The decision of the representative dated March 6, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/kjw