

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONOVAN X DENNIS**  
Claimant

**APPEAL NO. 09A-UI-06967-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMPS NOW HEARLAND LLC**  
Employer

**Original Claim: 04/05/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated April 27, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 3, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Joseph McDonnell participated in the hearing on behalf of the employer with a witness, Shea Munson.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant was assigned to work as a laborer at Honeywell from July 7, 2008, to December 18, 2008.

The claimant was unable to work on December 19, 2008, because of a severe ice storm that day. He called Honeywell and left a message that he would not be at work. Although the employer's work rules require employees to call the employer as well, the claimant had always called in his absences to Honeywell in the past. He had never been counseled about this. On one occasion, he was absent from work with notice to Honeywell due to the death of his father. When the senior recruiter with the employer learned about this, she contacted him and told him to let the employer know when he was able to return to work again.

Honeywell informed the employer that the claimant needed to be removed from the assignment due to his excessive absences and tardiness. Other than the absences due to his father's death, the claimant's absences or leaving work early had been approved in advance by Honeywell. The claimant did have several days when he was late for work. The claimant had never been warned about his attendance.

The employer informed the claimant that he was discharged for missing too much work.

**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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The claimant was absent from work due to severe weather conditions on December 19, 2008. He contacted Honeywell regarding his absences, which was the accepted practice. The claimant's previous absences had been approved by Honeywell. The claimant did not deliberately violate the employer's rule about contacting the employer regarding absences.

**DECISION:**

The unemployment insurance decision dated April 27, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw