

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTIN P CARR**  
Claimant

**APPEAL NO. 07A-UI-05416-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THEISENS INC**  
Employer

**OC: 04/22/07 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated May 15, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 12, 2007. The claimant participated. The employer participated by Cindy Burdt and Doug Siesker. Exhibits One through Seven were received into evidence.

**ISSUES:**

The issues in this matter are whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all the evidence in the record, finds: The claimant last worked for this employer from August 28, 2006 until April 17, 2007 when he was discharged from employment. The claimant worked as an automobile department employee on a full-time basis and was paid by the hour. His immediate supervisor was Doug Siesker.

The claimant was discharged after a series of events that began on April 15, 2007. Mr. Carr had been scheduled to work but had prior approval to switch his hours with a coworker in the event that he was involved in a state pool tournament. Neither the claimant nor the replacement worker reported that day. Mr. Carr believed that the replacement worker had been notified via a message that Mr. Carr had left for him on April 14, 2007. The replacement worker subsequently reported after the employer contacted him and requested that he report. Because of confusion in the matter the employer did not plan to discipline the claimant or the replacement.

On April 16, 2007, the claimant reported for work but shortly thereafter left indicating that he was going home "sick," then adding that he was also leaving because the other worker had "screwed him over on Sunday." The claimant did not request or obtain management approval before leaving that day, although he was aware that management approval was required and that any

impending absences must be reported and approved by management. Because the claimant had been warned in the past about attendance and was aware of the requirement that he provide notice, a decision was made to terminate Mr. Carr from his employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes after careful review of the evidence in this matter that the claimant's discharge took place under disqualifying conditions. The evidence in the record establishes that Mr. Carr had been warned regarding attendance in the past and was aware that he needed to obtain permission from management or his direct supervisor before leaving work prior to the end of an established work shift. The claimant was also aware that he was required to provide direct notification to management or his supervisor of any absence. Although Mr. Carr maintains that he left work on April 16, 2007 because he was sick, the evidence establishes that he made other statements leading the employer to the reasonable conclusion that his leaving was not due to illness and was unnecessary. The evidence establishes that although Mr. Carr knew that he was required to obtain permission from a supervisor or a management individual, he did not do so. The claimant's final absence thus was unexcused and not properly reported. The Iowa Supreme Court in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence did not constitute misconduct even in a case in which the worker disregarded the employer's instruction to call with a status report.

Although the employer may have made a sound management decision to terminate Mr. Carr for the reasons stated herein, the administrative law judge finds that the claimant's discharge took place under nondisqualifying conditions.

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.

**DECISION:**

The fact-finder's decision dated May 15, 2007, reference 01, is affirmed. The claimant was discharged under nondisqualifying conditions and is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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