

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A TAFOLLA
Claimant

APPEAL NO. 07A-UI-06345-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC
Employer

**OC: 12/24/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 15, 2007, reference 03, that concluded he was discharged for work-connected misconduct.. A telephone hearing was held on July 16, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Mitzi Tann participated in the hearing on behalf of the employer with witnesses, Doug Stoner and Thor Johnson. Exhibits One to Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a hardware apprentice from May 19, 2003, to May 30, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after having three unexcused absences in a six-month period.

As of November 27, 2006, the claimant had reached three unexcused absences after he had unexcused absences on September 18, 2006, and November 20, 2006, and unexcused tardies on September 18 and November 13, 2006. The claimant was subject to termination, but the employer placed the claimant on six months' probation during which he could not be late or have an unexcused absence or he would be terminated.

The claimant does not have a driver's license and had been riding to work with a co-worker. The co-worker was ill and did not pick the claimant up for work on May 22, 2007. The claimant had to get his wife to drive him to work, and as a result, the claimant arrived late for work. The claimant did not punch in on the time clock but arrived at work a few minutes late.

Based on the claimant violating the terms of his probation, he was discharged on May 30, 2007, 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.

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 unexcused absenteeism 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, especially since he was given a final warning about his attendance. The claimant argues that his ride not showing up would provide a valid excuse for his report late. Under the circumstances, however, the claimant needed to have a back up plan that would allow him to arrive at work on time if his ride was late or did not show. The transportation problem was something within the claimant's ability to control.

Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated June 15, 2007, reference 03, 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