

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES D CATO**  
Claimant

**APPEAL NO. 07A-UI-04198-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MUSCO SPORTS LIGHTING LLC**  
Employer

**OC: 03/25/07 R: 04  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 12, 2007, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 9, 2007. Employer participated by Angela Werner, Human Resource Coordinator. Claimant failed to respond to the hearing notice and did not participate. Claimant's appeal letter was read into the record.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 26, 2007.

Claimant was discharged on March 26, 2007 by employer because claimant was three hours late for work. Claimant did not call in to report he would be late for work. Claimant was late due to an illness. Employer requires an immediate report when an employee is late for work.

Claimant had a final warning on his record January 30, 2007 for absenteeism and tardiness.

Claimant had three prior unexcused absences; January 23, 2007, January 18, 2007 and October 10, 2006.

**REASONING AND CONCLUSIONS OF 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.

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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant failed to call in and report his absence. While absenteeism due to illness is excusable, the failure to report an absence is not. Claimant had a duty to call in and inform the employer that he was running late. Claimant failed to do so. Improperly reporting an absence is a policy violation. The three prior unexcused absences create a case of chronic unexcused absenteeism. This is misconduct as defined by Iowa law. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated April 12, 2007, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs