

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG L STOUT
Claimant

APPEAL NO: 06A-UI-09035-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

OC: 08/06/06 R: 03
Claimant: Respondent (1)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer, Heartland Express, filed an appeal from a decision dated August 30, 2006, reference 01. The decision allowed benefits to the claimant, Craig Stout. After due notice was issued a hearing was held by telephone conference call on September 25, 2006. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Leah Kahrs and Vice President of Regional Operations Todd Trimble.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Craig Stout was employed by Heartland Express from January 5, 2004 until August 7, 2006. He was a full-time after hours operations assistant working 6:00 p.m. until 6:00 a.m. At the time of hire the claimant received a copy of the employee handbook. The attendance policy requires the employee to personally contact a supervisor prior to the start of the shift to report any absences.

The claimant did receive a counseling session from Vice President of Operations Todd Trimble on June 30, 2006. Mr. Stout had been sent home on June 26, 2006, because he was "incoherent" due to some personal problems and the employer felt he was unable to perform his work duties. He was allowed to take two days of vacation to deal with his personal problems.

On August 4, 2006, the claimant's spouse called in to his supervisor to say he would not be at work due to illness, he had food poisoning and went to the hospital for treatment. Mr. Stout called his supervisor personally after arriving at the hospital and offered to work Saturday and Sunday because the doctor had told him the symptoms would be gone in 24 hours, but he was told to come in at 10:00 a.m. on Monday to talk with Mr. Trimble. He was discharged at that meeting for not properly reporting his absence.

The claimant acknowledged receiving the employer's policy handbook but did not have any recollection of the requirement that the employee must personally call his or her supervisor to report an absence.

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(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 was discharged for failing to properly report an absence on August 4, 2006. There is no dispute his absence was reported by someone else on the day in question. It was due to illness but was, apparently, not properly reported under the employer's policies. However, for disqualification due to absenteeism, the absences must not only be unexcused but excessive.

The administrative law judge does not consider one incident of an improperly reported absence to be excessive. Under the provisions of the above Administrative Code section, this is not misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of August 30, 2006, reference 01, is affirmed. Craig Stout is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs