

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON M MCCLANAHAN**  
Claimant

**APPEAL NO. 06A-UI-10046-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNTYLINE ENGINEERING INC**  
Employer

**OC: 09/17/06 R: 02  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Countyline Engineering, filed an appeal from a decision dated October 12, 2006, reference 01. The decision allowed benefits to the claimant, Aaron McClanahan. After due notice was issued a hearing was held by telephone conference call on October 30, 2006. The claimant participated on his own behalf. The employer participated by Purchasing Agent Brad Lewis.

**ISSUE:**

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

**FINDINGS OF FACT:**

Aaron McClanahan was employed by Countyline Engineering from March 7, 2005 until September 4, 2006. He was a full-time welder. On August 30, 2006, the claimant asked Manager Arty Allen if he could take a few days off in order to deal with some personal matters involving the Internal Revenue Service. He was to return to work on Tuesday, September 5, 2006. On Monday, September 4, 2006, Labor Day, his foreman, Don Ostrander, came to his home and told him that Manager Jim Kutschute had instructed him to tell the claimant he was being discharged for “missing too many days in the last couple of months.”

Mr. McClanahan acknowledged he had taken about six or seven days off since May 2006 but these were all properly reported and due to either his children or his wife being ill.

**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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer maintained the claimant quit because he did not appear for work as scheduled on September 5, 2006. However, it is acknowledged he was off work with the permission of his manager. Mr. McClanahan did not return to work because he was told he was discharged while he was still off on the approved leave. The employer has failed to present any testimony or evidence to rebut this testimony and has failed to meet its burden of proof. Disqualification may not be imposed.

**DECISION:**

The representative's decision of October 12, 2006, reference 01, is affirmed. Aaron McClanahan is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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