

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES J MARHEINE**  
Claimant

**APPEAL NO. 08A-UI-01186-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARZETTI FROZEN PASTA INC**  
Employer

**OC: 01/06/08 R: 02  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, James Marheine, filed an appeal from a decision dated January 23, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 19, 2008. The claimant participated on his own behalf. The employer, Marzetti Frozen Pasta, Inc. (Marzetti), participated by Human Resources Manager Steve Bowers. Exhibit One was admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

James Marheine was employed by Marzetti from April 3, 2006 until January 7, 2008, as a full-time maintenance worker. The employer allows each employee three personal days per calendar year, and then seven additional attendance points may be accumulated before discharge occurs at eight points. Mr. Marheine was given "attendance memos" on July 9, October 12 and December 12, 2007, when he had reached certain point levels. The final warning was for 7.5 points.

The claimant used his personal days and accumulated at least six points due to transportation problems or for visiting and socializing with family members. He had one-half point left and on December 28, 2007, he was 13 minutes late to work. This was due to a snow fall which slowed traffic on the roads. Other employees who lived in the same area as the claimant were able to arrive at work in a timely manner.

Mr. Marheine was discharged by Maintenance Manager John Miller on January 7, 2008, after the employer had reviewed his attendance record, warning level and point accumulation, and the human resources managers and department managers had been consulted.

## 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.

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 had been advised his job was in jeopardy as a result of his attendance. His final occurrence was a tardy due to weather conditions and Mr. Marheine argues the employer should have given him some leeway due to the weather. However, the reason for the three personal days and allowing seven absences before discharge is for such occasions when the weather is bad. The claimant elected to spend the majority of his attendance points on family social occasions and did not leave himself any margin for error at the end of the year. Other employees, who had just as far to travel, made it to work in a timely manner on December 28, 2007, and the weather was therefore not a major obstacle.

The record establishes the claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

**DECISION:**

The representative's decision of January 23, 2008, reference 01, is affirmed. James Marheine is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs