

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVAN O VOELZ
Claimant

APPEAL NO. 07A-UI-08021-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE RACING ASSOCIATION LTD
Employer

**OC: 07/15/07 R: 12
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 August 15, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 13, 2007. Claimant participated personally with witness Rick Voelz. Employer participated by Tami Schnee, Human Resource Generalist. Exhibit One was admitted into evidence.

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 July 19, 2007.

Claimant was discharged on July 19, 2007 by employer because claimant missed a meeting on July 17, 2007. Claimant had two prior unexcused absences on his record, October 24, 2006 and February 17, 2007 due to transportation issues. Claimant did have other absences due to illness that were properly reported.

Claimant was on a point system. Claimant was one or two days from having a point removed from his record because of good attendance.

Claimant missed a meeting on July 17, 2007 because he did not look at the announcements board. The meeting was usually written on his schedule. On this occasion the meeting was not on the schedule but on the board next to the schedule. Claimant was informed at the time of hire that he must look at both boards.

Claimant had a final warning for absenteeism on his record.

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(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 warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant missed three times for reasons that are not excusable. It was clearly claimant's responsibility to check on his work schedule. Claimant failed in his duty. It seems equity weighs heavily in claimant's favor since he was just a day or so away from having a point removed. Most employers would have cut claimant a break. Here, because of union problems, employer decided to strictly enforce policy. Nevertheless, the law indicates that three unexcused absences constitute misconduct. It does not seem a fair holding but it is a legal holding. 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 August 15, 2007, reference 01, 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.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css