

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY J FRANZEN
Claimant

APPEAL NO. 12A-UI-00764-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INFASTECH DECORAH LLC
Employer

OC: 10/16/11
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jeremy Franzen, filed an appeal from a decision dated January 12, 2012, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 21, 2012. The claimant participated on his own behalf. The employer, Infastech, provided a telephone number to the Appeals Section. That number was dialed at 2:02 p.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the employer's participation unless a witness contacted the Appeals Section prior to the close of the record. By the time the record was closed at 2:40 p.m. the employer had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

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

FINDINGS OF FACT:

Jeremy Franzen was employed by Infastech from January 9, 1995 until October 12, 2011 as a full-time tool maker. He had received at least two warnings regarding attendance. His last day of work was the shift which began at 11:00 p.m. on Sunday, October 9, 2011. He was absent the next two days and called in to his supervisor to report his absence.

On Wednesday, October 12, 2011, he called his supervisor at home to ask if he still had a job and was told he was discharged.

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 absenteeism. But under the provisions of Iowa Administrative Code section 871 IAC 24.32(8), there must be a current, final act of misconduct which precipitates the decision to discharge before disqualification from receiving unemployment benefits may be imposed. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

The employer did not provide any evidence or testimony regarding the claimant's discharge and the administrative law judge must accept Mr. Franzen's testimony as uncontested. The final incident was a properly reported illness. This is not misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of January 12, 2012, reference 03, is reversed. Jeremy Franzen is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css