

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN J LANE**  
Claimant

**APPEAL NO. 07A-UI-07424-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COE COLLEGE**  
Employer

**OC: 07/01/07 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

John Lane filed an appeal from a representative's decision dated July 24, 2007, reference 01, which denied benefits based upon his separation from Coe College. After due notice was issued, a hearing was held by telephone on August 16, 2007. Mr. Lane participated personally. The employer participated by Michael White and Lisa Chia. Exhibits One through Five were received into evidence.

**ISSUE:**

At issue in this matter is whether Mr. Lane was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from December 8, 2004, until June 22, 2007, when he was discharged from employment. Mr. Lane held the position of full-time plumber and was paid by the hour. His immediate supervisor Lisa Chia. Mr. Lane was discharged based upon repetitive failure to report to work timely and failure to provide proper notification to the employer of impending absences. During the course of his employment, Mr. Lane had been repeatedly absent or tardy and had often failed to provide notification to his employer indicating that he would not be reporting or that he would be late. In an effort to retain the claimant as an employee, the employer repeatedly counseled Mr. Lane about the employer's expectations regarding attendance, punctuality, and notification. Employees are expected to notify the employer prior to the beginning of the work shift by calling a specified number and leaving a message. When Mr. Lane continued to fail to provide proper notification and continued to be excessively tardy, he was given a verbal warning on February 13, 2007, and a written warning on April 3, 2007.

Mr. Lane failed to report or provide notification to the employer on June 18, 2007. Proper notification was not provided. On June 21, 2007, the claimant failed to report for scheduled work and did not provide advance notification to the employer. Mr. Lane subsequently called the employer's message number at 11:18 and 11:20 a.m., each call lasting approximately four

seconds, insufficient time to leave a message for the employer. As the call-ins were substantially after the claimant's 7:00 a.m. beginning time, the employer reasonably concluded that the claimant had not properly notified the employer once again. Mr. Lane did not report or notify the employer on June 22 that he would not be reporting; however, the claimant had been discharged from employment based upon his continuing failure to report in a timely manner and/or provide required notification.

It is the claimant's position that he often notified the employer; however, his notification was not document. It is the claimant's further position that the employer knew or should have known on some occasions that he would absent the next day without the claimant providing direct notice to the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that Mr. Lane's discharge took place under disqualifying conditions. The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. Absence due to matters of "personal responsibility," for example oversleeping or transportation difficulties, are considered to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

The record in this case establishes that Mr. Lane repeatedly failed to provide reasonable and proper notification to his employer regarding impending absences or tardiness. The employer acted reasonably in repeatedly warning Mr. Lane prior to discharging him for continuing failure to provide notification and/or to report to work timely. The evidence establishes that Mr. Lane failed to provide proper notification regarding impending tardiness during his most recent attendance infractions on June 18, and June 21, 2007.

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.

For reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct in connection with his work. Benefits are withheld.

**DECISION:**

The representative's decision dated July 24, 2007, reference 01, is hereby affirmed. The claimant was discharged for misconduct in connection with his work. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, providing he satisfies all other conditions of eligibility.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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