

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JOSHUA L WINFIELD
4114 MATTERN AVE
DES MOINES IA 50317**

**H AND H PLUMBING INC
3223 – 170TH ST
GRANGER IA 50109**

**Appeal Number: 05A-UI-03443-DWT
OC: 03/13/05 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Joshua L. Winfield (claimant) appealed a representative's March 31, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of H and H Plumbing, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2005. The claimant participated in the hearing. Chris Hansen, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 20, 2004 as a full-time plumbing apprentice. In January 2005, the claimant did not call or report to work on January 18 and 26. On January 19, the claimant was late for work, but called to let the employer know he would be late. On February 17 and 22, the claimant notified the employer he would be late for work. The employer warned the claimant on February 23, 2005, he had to report to work as scheduled. The claimant understood the employer would discharge him the next time he did not work as scheduled.

The evening of March 9, the claimant's wife started getting a migraine headache. She took her medication, but she still had the migraine the morning of March 10. Sometime before his 7:00 a.m. start time, the claimant called a co-worker to let him know the claimant would be late for work. The claimant indicated he had to take his children to school and his wife to the emergency room.

The claimant did not take his wife to the emergency room until the children had been taken to school. The claimant stayed with his wife in the emergency room. They were not dismissed until around 1:00 or 1:30 p.m. The claimant went back home with his wife. The claimant did not call the employer again on March 10, 2005.

The claimant reported to work on March 11, 2005. The employer discharged the claimant on March 11 because he again failed to call or report to work after he had been warned on February 23, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew his job was in jeopardy after the employer warned him on February 23, 2005. The claimant failed to take reasonable steps on March 10 by contacting the employer again to personally advise management of his wife's medical condition and that he was unable to work as scheduled that day. The claimant's failure to make an effort to contact the employer after he realized he would not report to work at all that day amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for

reasons constituting work-connected misconduct. As of March 13, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 31, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 13, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf