

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN E STANCEL**

Claimant

**APPEAL NO. 10A-UI-14439-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROWN PLUMBING COMPANY**

Employer

**OC: 08/01/10**

**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Brown Plumbing Company (Brown), filed an appeal from a decision dated October 14, 2010, reference 01. The decision allowed benefits to the claimant, Ryan Stancel. After due notice was issued a hearing was held by telephone conference call on December 6, 2010. The claimant participated on his own behalf. The employer participated by President Jon Shebetka.

The claimant elected to use a cell phone and was advised it was not recommended. He was notified if the connection was lost during the hearing the administrative law judge would not call back until he contacted the Appeals Section to indicate the cell phone was working again or to provide the number of another phone, but the hearing would proceed without his participation and might very well be over by the time he called back. The connection was lost at 10:22 a.m. just as the hearing was ending.

**ISSUE:**

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

**FINDINGS OF FACT:**

Ryan Stancel was employed by Brown Plumbing from June 1, 2006 until December 3, 2009 as a full-time plumber. President Jon Shebetka had talked to him over the last two months of his employment about the amount of work he was missing. The claimant was having "personal issues" with his son.

Because of his extensive absenteeism Mr. Shebetka called Mr. Stancel on the morning of December 2, 2009, to ask if he was going to come to work and the claimant assured him he was. However, the employee, Greg, who usually gave the claimant a ride to work reported to the job site without Mr. Stancel. Shortly after Mr. Shebetka had talked with him, the claimant called Greg and said he would not be coming into work, but he never called the employer directly.

Mr. Stancel maintained he had received a call from the mother of his son shortly after he had ended the call from the employer. Their son had to go to the doctor. The claimant agreed to do this rather than have the mother take their son, or have his mother do it or have the mother's parents, who usually cared for the child during the day, do it in his stead. The mother was enrolled in school at the time and no information had been provided as to why she expected the claimant to miss work rather than her missing class.

The next day Mr. Shebetka came to the claimant's home and told him he was fired. At that time Mr. Stancel merely said he had not come to work because he "didn't feel like it."

Ryan Stancel has received unemployment benefits since filing a claim with an effective date of August 1, 2010.

### **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 missed a great deal of work due to “personal issues” with his son, but he refused to elaborate as to the causes. The employer had discussed his absenteeism with him more than once. The final occurrence was not properly reported. The claimant had assured the employer he would be in to work and then did not report he would not be in after all.

Mr. Stancel stated he had to take his child to the doctor but he acknowledged he had plenty of options, such as having the child’s mother or her parents, or his mother, take the child for medical attention. In any event, he did not properly notify the employer of his absence after giving his assurance he would be present at the job site. If he had the opportunity to tell his co-worker he would be absent, he could have called the employer as well. This makes the absence unexcused. With the prior absences due to “personal issues” this constitutes excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer’s account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual’s separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of October 14, 2010, reference 01, is reversed. Ryan Stancel is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css