

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TREVOR L ELSON**  
Claimant

**APPEAL NO: 09A-EUCU-00554-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DARNELL CONSTRUCTION &  
LAWNCARE LLC**  
Employer

**OC: 02/17/08**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated December 17, 2009, reference 01, that held the claimant was not discharged for misconduct on November 5, 2009, and benefits are allowed. A telephone hearing was held on February 5, 2010. The claimant, and former employee, Jordan Feye, participated. Jason Darnell, Owner, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time laborer about August 1, 2009, and last worked for the employer on a roofing crew on November 5, 2009. The claimant asked Owner Darnell if he could take off work on November 6 to travel to Nashville to help his brother move. The claimant asked if he could pick up his paycheck early on Friday before he left, and that he would be back on the following Monday. Owner Darnell approved the claimant's requests.

When the claimant failed to call in and report for scheduled work at 8:00 a.m. on Monday, he was discharged as a no-call/no-show to work. The claimant did not make it back until Monday afternoon, and he thought this was not an issue that would lead to discharge.

**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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on November 9, 2009.

The employer discharged the claimant for a single incident when he had not been subject to any prior discipline and there was no written policy that he could be terminated for this reason. The employer knew and approved a day off for the claimant, and it could have waited for the claimant to explain why he failed to call or report on Monday knowing that he had traveled a substantial distance to help his brother. This single incident does not constitute job disqualifying misconduct.

**DECISION:**

The department decision dated December 17, 2009, reference 01, is affirmed. The claimant was not discharged for misconduct on November 9, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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