

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS BURTLOW**  
Claimant

**APPEAL NO. 06A-UI-10719-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ICS INC**  
Employer

**OC: 10-08-06 R: 04  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 2, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 20, 2006. The claimant participated in the hearing. Eugene Schisel, President/General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time seeder for Industrial Coating Systems from November 22, 2004 to October 12, 2006. The claimant's position required that he often work out of town. On October 10, 2006, the claimant called the employer and said he could not go to Minnesota because his mother-in-law was in an accident and could not watch his children as she usually did. The employer told him to try to make it to Minnesota and then called back October 12, 2006, and stated it needed someone who was able to travel and needed someone immediately because it faced deadlines and asked if the claimant could guarantee the childcare issue would not come up again and when the claimant said he could not the employer terminated the claimant's employment. The claimant's wife works as a third-shift charge nurse and was unable to take time off that week. Prior to October 10, 2006, the claimant had missed one day of work during his employment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant was unable to travel to Minnesota October 10, 2006, due to childcare issues because his mother-in-law was injured in an accident and could not care for his children. This was not an on-going problem as evidenced by the fact the claimant had only missed one day during his nearly two years of employment. While his absence was an inconvenience to the employer, it does not rise to the level of excessive, unexcused absenteeism or intentional misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The November 2, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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