

**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**

**MARK A FITZGERALD
APT S-2
1623 PARK TOWNE CT
CEDAR RAPIDS IA 52402**

**CENTRO INC
950 N BEND DR
NORTH LIBERTY IA 52317**

**Appeal Number: 05A-UI-06736-HT
OC: 05/29/05 R: 03
Claimant: Appellant (5)**

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:

The claimant, Mark Fitzgerald, filed an appeal from a decision dated June 22, 2005, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 18, 2005. The claimant did not participate personally but submitted a written statement which was admitted as Exhibit A. The employer, Centro, Inc., participated by Human Resources Director John Pelton and Shipping and Receiving Leader Mike Stopko. Exhibits One and Two were admitted into the record on behalf of the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Mark Fitzgerald was employed by Centro, Inc., from December 8, 2003 until April 21, 2005. He was a full-time fork truck driver on the third shift.

Mr. Fitzgerald was scheduled to work at 11:00 p.m. on Sunday, April 17, 2005. Some time during the shift an unidentified individual contacted the employer and reported the claimant would not be in to work until Wednesday. The report stated it was due to medical reasons, but the employer read in the local newspaper the next day that the claimant had been arrested for driving under the influence of alcohol.

On Wednesday, April 20, 2005, Mr. Fitzgerald talked to Shipping and Receiving Leader Mike Stopko some time during the morning hours and asked if he should come in to work that night. He was told to do so because the employer needed to talk to him about the reason for his absence. At the end of his shift he met with Mr. Stopko and Director of Human Resources John Pelton. He admitted he had been in jail for three days due to an arrest for drunk driving.

The company policy requires the employee to call in personally to report any absences, which he had not done. He had also received prior warnings for absenteeism and tardiness, and the employer notified him on April 21, 2005, he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

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 was absent for three days due to being incarcerated for drunk driving. This is a personal problem and such absences are not considered excused. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism, which is misconduct under the provisions of the above Administrative Code section: He is disqualified.

DECISION:

The representative's decision of June 22, 2005, reference 02, is modified without effect. Mark Fitzgerald is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw