

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAYNE M ENGLUND**  
Claimant

**APPEAL NO. 11A-UI-06867-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRAD DEERY MOTORS**  
Employer

**OC: 05/02/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated May 12, 2011, reference 05, that held the claimant was discharged for excessive unexcused absenteeism on April 15, 2011, and which denied benefits. A telephone hearing was held on June 20, 2011. The claimant participated. Matt Meyer, sales manager, participated for the employer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant worked as a full-time sales consultant from January 3, 2011 to April 11. The claimant received the employer attendance policy, which provides for progressive discipline from a verbal warning to a written warning to termination.

Claimant was given a verbal warning for being late to work on March 21. He was issued a written warning on April 1 for a no-call, no-show to work that day. He was advised a further attendance issue would result in termination. The claimant was a no-call, no-show to work on April 12 and was discharged for absenteeism. During the hearing, claimant admitted he was absent from work that day.

Claimant focused on a pre-approved absence period due to surgery beginning April 14. Employer responded he was discharged on April 12 before it took effect.

**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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes the employer established misconduct in the discharge of the claimant on April 12, 2011, for excessive "unexcused" absenteeism.

The employer gave claimant warnings that his attendance was an issue and claimant admitted he got the final written warning on April 1. His no-call, no-show absence on April 12, given the warning, constitutes job-disqualifying misconduct. The post discharge surgery absenteeism is not relevant to the April 12 employment separation.

**DECISION:**

The decision of the representative dated May 12, 2011, reference 05, is affirmed. The claimant was discharged for misconduct in connection with employment on April 12, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw