

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

JAKE GRINSTEAD  
932 W 2<sup>ND</sup> ST APT 2  
WATERLOO IA 50701

APAC CUSTOMER SERVICES INC  
C/O FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-04293-JTT  
OC: 03/20/05 R: 03  
Claimant: Respondent (1)

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

APAC filed a timely appeal from the April 8, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 16, 2005. Claimant did participate. Employer did participate through Abraham Funchess, Senior Recruiter.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jake Grinstead was employed by APAC Services as a full-time customer service representative from January 3, 2005 until March 20, 2005, when Supervisor Heather Schweitzer discharged him for excessive absenteeism.

Mr. Grinstead contacted his supervisor on March 20, to advise that he would be late because he had just missed the bus. Ms. Schweitzer advised that Mr. Grinstead would probably be discharged as a result of the absence, but that Mr. Grinstead would have to wait until the end of the day to learn his fate. Mr. Grinstead indicated that the employer might as well terminate him at that point, rather than wait until the end of the day. The termination documentation does not mention tardiness or an absence on March 20. The final *documented* absence that prompted the employer to discharge Mr. Grinstead occurred on March 6, 2005, when Mr. Grinstead called in sick. On that date, Mr. Grinstead contacted the employer at least one hour before the scheduled start of his shift, pursuant to the employer's attendance policy. Mr. Grinstead also called in sick on February 9 and 16, and complied with the employer's notification requirement on those dates. Mr. Grinstead left work early on January 31, but the employer did not document the reason for the early departure. Mr. Grinstead was tardy to work on February 14, 24, and 25, but the employer did not document the reason for the late arrivals.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Grinstead was discharged for misconduct in connection with his employment based on excessive unexcused absences.

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(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.

Because the claimant was discharged, the employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for Mr. Grinstead's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the employer must show that his unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the

employer must first show that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that the final absence that prompted the discharge occurred on March 20, 2005, and that the absence was unexcused. The employer did not document this absence. Instead, testimony regarding this absence came from the claimant. The evidence in the record fails to support a finding that any other absences or tardiness were unexcused. Accordingly, no disqualification will enter.

DECISION:

The representative's decision dated April 8, 2005, reference 01, is affirmed. The claimant was discharged from his employment for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

jt/s