

**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 REEVES
1712 SOUTH 5th ST
MARSHALLTOWN IA 50158**

**O'REILLY AUTOMOTIVE INC
O'REILLY AUTO PARTS
ATTN PAYROLL
PO BOX 1156
SPRINGFIELD MO 65801-1156**

**Appeal Number: 05A-UI-12025-RT
OC: 10-30-05 R: 02
Claimant: Appellant (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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Mark A. Reeves, filed a timely appeal from an unemployment insurance decision dated November 18, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 13, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the Notice of Appeal. Terry Weber, Manager of the employer's location in Marshalltown, Iowa, where the claimant was employed, participated in the hearing for the employer, O'Reilly Automotive, Inc., doing business as O'Reilly Auto Parts. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department of unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full time parts specialist from June 16, 2004 until he was discharged on October 21, 2005. The claimant began work part time and then became full time. The claimant was discharged for poor attendance. On October 19, 2005, the claimant left work early when he went to lunch and never returned. The claimant told a co-worker that he was not feeling well and he had no intention of returning even if the employer wanted to fire him. The claimant did not have permission to leave nor did he inform anyone in a position of authority that he was leaving. On October 20, 2005, the claimant was absent. The employer had no reason why and the claimant did not notify the employer of this absence. The employer has a rule or policy in its handbook as shown at Employer's Exhibit One requiring that employees notify their supervisor, or the designated person in charge each day of an employee's absence and before the employee's shift is to begin unless the employee is on an approved leave. The claimant was not on an approved leave for October 19 and 20, 2005 and did not report those absences. The claimant would have received two written warnings for these absences but the claimant never returned to work. When the claimant did not return to work the employer's witness, Terry Weber, Manager of the employer's location in Marshalltown, Iowa, where the claimant was employed, called the claimant on October 21, 2005 and informed the claimant that he was discharged. On May 11, 2005, the claimant was absent without notifying the employer and received a written corrective action on May 15, 2005 as shown at Employer's Exhibit Two. The claimant also received a written corrective action on August 26, 2005 when the claimant called in on that day or the day before and said that he was going to be tardy but never showed up for work and never notified the employer despite several phone calls from the employer. The claimant would have received two written corrective actions on October 24 and 25, 2005 for his absences on October 19 and 20, 2005 but the claimant never returned to work to receive his corrective actions. The claimant also had another absence which he did not properly report sometime between May and August. In addition to the written corrective actions the claimant received three or four verbal warnings about his attendance.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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's witness, Terry Weber, manager of the employer's location in Marshalltown, Iowa, where the claimant was employed, credibly testified, and the administrative law judge concludes, that the claimant was discharged on October 21, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. The evidence establishes that the claimant left work early on one occasion without permission and without notifying anyone in a position of authority and that he was further absent four other days and he did report those absences. The claimant received two written corrective action warnings and also three or four verbal warnings. On the record here, the administrative law judge concludes that the claimant's absences or occasions when he left work early were not for reasonable cause or personal illness and not properly reported and were excessive unexcused absenteeism and disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of November 18, 2005, reference 01, is affirmed. The claimant, Mark A. Reeves, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism.

kkf/kjf