

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L JENSEN

Claimant

CEDAR RAPIDS COMM SCHOOL DIST

Employer

APPEAL NO: 13A-UI-07227-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/09/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 10, 2013, reference 01, that held he was discharged for misconduct on May 15, 2013, and benefits are denied. A telephone hearing was held on July 23, 2013. The claimant participated. Sue Wilber, Lead HR Specialist, participated for the employer.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on August 20, 2002, and last worked for the employer as a full-time custodian on May 15, 2013. The claimant was on light duty work at the Board of Education. He was on a worker's compensation claim.

The employer issued claimant a written warning for attendance on March 18, 2013. It made it clear to claimant he needed to provide a doctor excuse for absences from work. The employer scheduled a doctor appointment for claimant on May 8 at 1:30 p.m. to see its doctor. Claimant left work at 12:20 p.m. and went home to change his lower dress garment from pants to shorts in anticipation of the knee injury examination. He used his one-half hour lunch break, changed clothes, left for the appointment from his house and arrived at the doctor's office about 1:20 p.m. He was examined and released by the doctor to return to work at 2:15 p.m. His work location was about 15 minutes away. He left a voice mail message for HR that he was going home to elevate and ice his knee and would not return to work.

HR notified claimant by phone on May 8 not to return to work the following day as he was under investigation for his conduct regarding leaving work and the doctor appointment. After reviewing a security video, the employer confirmed the time claimant left work and failed to

clock out. It considered him dishonest about his leaving work time. The employer discharged claimant on May 15 for an unexcused absence from work on May 8 and employee dishonesty as it related to the amount of time he took for it.

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(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.

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 employer failed to establish claimant was discharged for misconduct on May 8, 2013.

The employer knew about the May 8 scheduled doctor appointment as it had arranged it. Claimant was on a light duty work assignment due to his worker's compensation claim. Even with claimant leaving work at 12:20 p.m. the amount of time given his lunch break, going home to change clothes, and arriving for the appointment at 1:20 p.m. is not a significant absence period given the circumstances.

Claimant notified the employer of his further absence that he would not return to work for excusable reasons though the doctor released him to return to work at 2:15 p.m. The doctor authorized the method of treatment that claimant chose to exercise when he went home rather than return to light duty work.

While claimant might not have been direct with the employer about his absence period due to the doctor appointment on May 8, he offered a reasonable explanation that mitigates any untruthfulness. Considering the absence period and what claimant did in viewing the evidence as a whole, job disqualifying misconduct is not established.

DECISION:

The department decision dated June 10, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on May 15, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs