

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

CURTIS A KEIFER
100 S MAIN ST
IONIA IA 50645-9463

THEISEN'S INC
4949 CHAVENELLE RD
DUBUQUE IA 52202-2630

Appeal Number: 06A-UI-03952-RT
OC: 02/26/06 R: 02
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 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Curtis A. Keifer, filed a timely appeal from an unemployment insurance decision dated March 29, 2006, reference 02, denying unemployment insurance benefits to him because he was discharged for excessive unexcused absenteeism and tardiness after being warned. After due notice was issued, a telephone hearing was held on April 27, 2006, with the claimant participating. Cindy Burdt, Director of Human Resources, and Jason Manning, Store Manager in Charles City, Iowa, participated in the hearing for the employer, Theisen's, Inc. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time person in the automotive service department from June 27, 2004, until he was separated from his employment on February 20, 2006. On that day the claimant was absent without notifying the employer and never returned to work thereafter. On February 19, 2006, the claimant was absent for a mandatory meeting. The claimant was absent because he was busy working on a vehicle on his own time and he lost track of time for the mandatory meeting. He called the employer but only after the meeting had started. Thereafter, the claimant never returned to work because he believed he would be discharged because of his attendance. The claimant was tardy on February 9, 2006, 2 hours and 50 minutes without notifying the employer. The claimant did not remember why he was tardy on that occasion. The claimant was absent on November 28, 2005 and did not notify the employer. The claimant did not know why he was absent. On May 2, 2005, the claimant was absent from another mandatory meeting because he forgot about it. The claimant did not notify the employer on that occasion.

The claimant received three disciplines for his attendance as shown at Employer's Exhibit One. The claimant received a documented consultation on May 2, 2005 and a first written warning on November 28, 2005. The claimant was informed on both occasions that further occurrences could result in his termination. The claimant then received a second written warning and suspension on February 9, 2006 and was told that he needed to show immediate improvement on his attendance and if he did not he would be terminated.

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 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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, (7) provide:

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).

(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 first issue to be resolved is the character of the separation. The employer's witnesses were equivocal about the character of the separation testifying that the claimant actually quit but that it could have been considered a discharge. The claimant conceded that he voluntarily quit because he figured he would be discharged. Although there was some evidence that the claimant would have been discharged had he not quit, the administrative law judge must conclude here that the claimant was not compelled to resign and was not given the choice of resigning or being discharged which would not be a voluntary leaving. See 871 IAC 24.26(21). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective February 20, 2006, when he was deliberately absent thereafter without notifying the employer. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The only reason that the claimant left his employment was because of his attendance and his belief that he would be discharged or at least reprimanded. However, leaving work because of poor attendance is not good cause attributable to the employer nor is leaving work voluntarily after being remanded. See 871 IAC 24.25(28). There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective February 20, 2006, without good cause attributable to the employer 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.

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for excessive unexcused absenteeism which is disqualifying misconduct. The evidence establishes that the claimant had, prior to February 20, 2006, three absences and one tardy which were not for reasonable cause or personal illness and not properly reported. The claimant received three disciplines as shown at Employer's Exhibit One. The claimant was fully apprised that the employer was concerned about his attendance and that if it did not improve he would be discharged. Nevertheless, the claimant missed a mandatory meeting simply because he was working on another vehicle on his own time and lost track of time. This is not good cause for missing a mandatory meeting. Accordingly, the administrative law judge would conclude that these absences were excessive unexcused absenteeism and disqualifying misconduct. Therefore, even if the claimant's separation should be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct and would still be disqualified to receive unemployment insurance benefits.

DECISION:

The representative's decision of March 29, 2006, reference 02, is modified. The claimant, Curtis A. Keifer, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

cs/tjc