

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L YORK
Claimant

APPEAL NO. 07A-UI-08330-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOSEPH BEHR & SONS INC
Employer

**OC: 07/29/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 27, 2007, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for an held on September 17, 2007. The claimant participated. The employer participated by Marlene Garard, Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from July 24, 2006 until August 2, 2007 as a full-time warehouse worker and was paid by the hour. Mr. York was discharged after he exceeded the permissible number of attendance infractions allowed by the company. Mr. York was aware of the policy and had signed an acknowledgement and had been warned prior to being discharged. The claimant had been absent for a number of reasons that included personal reasons related to marital difficulties, counseling and court appearances. The claimant had also been absent due to illness on a number of occasions. At the time of discharge the claimant had been absent for these reasons a total of 90.5 hours in the calendar year 2007.

The claimant's final attendance infraction took place when Mr. York was unable to report for scheduled work due to illness and had properly reported his impending absence as required by company policy.

REASONING AND CONCLUSIONS OF LAW:

Excessive unexcused absenteeism is one form of misconduct as found by the court in Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The court held that in order to be misconduct the absence must be both excessive and unexcused. The court further

held however, that absence due to illness and other excusable reason is deemed excused if the employee properly notifies the employer. In this case the evidence establishes that Mr. York properly notified the employer of his most recent absence and the absence was due to illness and thus is considered excused. As the final incident that resulted in the claimant's discharge from employment was a nondisqualifying event, the administrative law judge must conclude that the claimant's separation took place under nondisqualifying circumstances.

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.

For the reasons stated herein the administrative law judge finds that the claimant was discharged under nondisqualifying conditions. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 27, 2007, reference 01, is hereby affirmed. The claimant was discharged under nondisqualifying conditions. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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