

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES R NIERLING
Claimant

APPEAL NO. 11A-UI-07666-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 04/24/11
Claimant: Appellant (1)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 27, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 7, 2011. Employer participated by Amy Potraze, Human Resources Manager, and Kim Higginbotham, Center Director. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Amy Potraze and the testimony of Kim Higginbotham.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer does telemarketing. The claimant was hired on August 18, 2009, as a full-time sales representative. His last day of work was April 8, 2011. He was terminated on April 13, 2011.

On April 8, 2011, the claimant left early at lunch without getting permission from his supervisor. The claimant's normal workday was from 8:00 a.m. to 4:30 p.m. The claimant was a no-call/no-show on April 11, 2011, and April 12, 2011. He came to work at 9:30 a.m. on April 13, 2011. He did not telephone his supervisor or personally speak to his supervisor on any of these days he was absent.

The employer has a written policy, of which the claimant was aware, that the only acceptable method of reporting an absence is to speak personally to a supervisor. Any absence is to be reported prior to the start of the shift.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant had four consecutive unexcused absences from April 8, 2011, through April 13, 2011. He did not have permission from his supervisor to leave early on April 8, 2011, and did not notify his supervisor by phone regarding the absences on April 11, 2011; April 12, 2011; and the tardiness on April 13, 2011. The claimant did not testify at the hearing and the reason or reasons for his absence are unknown. Even if his absence was for personal illness, he did not follow his employer's notification policy. The employer has shown excessive unexcused absenteeism. Benefits are denied.

DECISION:

The decision of the representative dated May 27, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css