

**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**

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**Appeal Number: 06A-UI-07750-ET
OC: 06-25-06 R: 01
Claimant: Respondent (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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 25, 2006, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 15, 2006. The claimant participated in the hearing. Zac Meyer, Operations Manager and Jerry Sander, Employer Representative, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time service technician for Best Buy from June 18, 2005 to May 13, 2006. On December 19, 2005, the claimant requested time off for a family emergency and stated he expected to be back January 5, 2006, and the employer granted his request. When the claimant returned he was told that the employer was cutting back many employees' hours and some employees would be terminated while others would have their hours cut. The department supervisor asked the claimant if he wished to continue with a limited schedule and the claimant indicated he did and the employer told him to keep checking the schedule. The claimant checked the schedule by phone or in person beginning January 8, 2006, and was not scheduled that week or any other week prior to February 19, 2006, at which time he was scheduled for four hours but the claimant had stopped checking the schedule by then and was not scheduled after that date. In mid-March 2006, the employer prepared a termination notice because it could not reach the claimant but the department manager asked the employer to wait because he wanted the claimant to continue to work for the employer. The employer terminated the claimant's employment May 13, 2006.

REASONING AND CONCLUSIONS OF LAW:

While this situation is somewhat similar to a lay-off, the claimant will not be returning to work for the employer so the separation must be treated as either a quit or a discharge. For the reasons that follow the administrative law judge concludes the claimant was discharged from his employment for no disqualifying reason.

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 has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant was granted time off for a family emergency on December 19, 2005, and was ready to return to work on January 5, 2006. While the store itself may have been busy with January returns, the claimant was not scheduled again until February 19, 2006, by which time he had stopped checking to see if he was scheduled because he had not been scheduled since January 3, 2006. The claimant checked with the employer weekly for several weeks but was not on the schedule and it is not unreasonable that he would have stopped checking after not being scheduled for nearly six weeks. The employer did not want to terminate the claimant's employment but that is effectively what happened when he was unscheduled for six weeks. Because the employer did not have work for the claimant the administrative law judge concludes the claimant was discharged and there is no evidence of misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 25, 2006, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/cs