

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY E PETARY
Claimant

APPEAL NO. 07A-UI-03893-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLOOMFIELD FOUNDRY INC
Employer

**OC: 12/24/06 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Bloomfield Foundry, filed an appeal from a decision dated April 12, 2007, reference 02. The decision allowed benefits to the claimant, Terry Petary. After due notice was issued, a hearing was held by telephone conference call on May 1, 2007. The claimant provided a telephone number of (641) 722-3873. That number was dialed at 3:01 p.m. but the claimant was not present. A message was left with Sharon indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 3:21 p.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Human Resources Supervisor Jack Matheny and Human Resources Representative Anita Cullor observed the proceedings but did not offer testimony.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Terry Petary was employed by Bloomfield from October 4, 2005 until March 28, 2007, as a full-time grinder working 6:00 a.m. until 2:30 p.m. He had received a copy of the employee handbook which sets out the progressive disciplinary procedure. An employee who received three written warnings in a rolling 12-month period is subject to discharge.

Mr. Petary received written warnings on January 16, 2006, November 16, 2006, and March 8, 2007, for rule violations. He was absent without prior approval on March 21, 2007, calling in prior to the start of the shift to say he had to meet with his lawyer. Human Resources Supervisor Jack Matheny told him he would have to have something in writing from his lawyer to confirm the appointment.

When the claimant returned to work later that day he did not have a statement from his attorney, saying he had left it in the car of the person who gave him a ride to work. The next day he

brought in a document saying he had a court date on January 26, 2007, which the employer rejected as it did not excuse his absence the day before. For the next week the claimant failed to bring in a statement from his attorney to excuse his late arrival on March 21, 2007, and was issued another written warning on March 28, 2007, and discharged by Mr. Matheny over the phone.

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.

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's policy calls for discharge of any employee who received three written warnings in a rolling 12-month period. However, the warning of January 16, 2006, should have "fallen off" the claimant's record after one year, but the employer still counted it and erroneously discharged the claimant after the warning of March 28, 2007. As of that date he should only have had two warnings on his record, the one issued that day and the one from November 6, 2006. Bloomfield did not properly follow its progressive disciplinary policy and the claimant was discharged with only two warnings on his record. The employer has failed to establish substantial, job-related misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of April 12, 2007, reference 02, is affirmed. Terry Petary is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css