

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN FINDLEY**  
Claimant

**APPEAL NO. 07A-UI-05438-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SSW ENTERPRISES INC  
COLLIS INC**  
Employer

**OC: 12/24/06 R: 04  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Shawn Findley, filed an appeal from a decision dated May 22, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 12, 2007. The claimant participated on his own behalf. The employer, Collis, did not provide a telephone number where a representative could be contacted and did not participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

Shawn Findley was employed by Collis from March 6, 2001 until May 8, 2007, as a full-time welder working 7:00 a.m. until 3:00 p.m. He received a copy of the employee handbook, which set out the attendance policy and progressive disciplinary procedures. Attendance is based on points, and an employee who accumulates 12 points is subject to discharge. One point will be deducted for 30 days of perfect attendance.

Mr. Findley received a final written warning approximately one month before his separation. It notified him he had ten points and that he could be discharged if he accumulated twelve. A few of the absences were due to either his illness or his daughter's, but the usual reason was having to go to his daughter's school and deal with her various problems.

On May 8, 2007, he was scheduled to work overtime and was to be at work at 5:00 a.m. He overslept and did not call in until 5:30 a.m., at which time he was told to report at his regular time. When he did, his supervisor notified him he was discharged because of absenteeism. He contacted Hob Davis, a union steward, and they visited with Deb Bianci in the human resources department. She confirmed the discharge was based on the total point accumulation.

## 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.

871 IAC 24.32(7) provides:

(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 claimant had been advised his job was in jeopardy as a result of his absenteeism. The majority of his absence appear to have been personal problems with his daughter, and the final incident was due to oversleeping. Matters of purely personal consideration, such as oversleeping and childcare issues, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant is disqualified.

**DECISION:**

The representative's decision of May 22, 2007, reference 01, is affirmed. Shawn Findley is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw