

**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**

**DOUGLAS E SHORES
111½ MILL ST APT B
LAKE MILLS IA 50450**

**GOLDEN OVAL EGGS LLC
1800 PARK AVE S
PO BOX 615
RENVILLE MN 56284-0615**

**Appeal Number: 05A-UI-11717-RT
OC: 10-16-05 R: 02
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Douglas E. Shores, filed a timely appeal from an unemployment insurance decision dated November 9, 2005, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 5, 2005, with the claimant participating. Todd Beck, Complex Manager, participated in the hearing for the employer, Golden Oval Eggs LLC. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time husbandry online worker from October 20, 2003 until he was discharged on October 14, 2005, for poor attendance. On October 14, 2005, the claimant was absent because he had no transportation. The claimant did not notify the employer until approximately 12:00 p.m. The claimant then arrived at work later that day and was informed that he was discharged. The employer has a rule or policy in its handbook, a copy of which the claimant received and for which he signed an acknowledgement and of which he was aware, requiring that employees who are going to be absent or tardy must call or notify the employer before the start of the employee's shift. The claimant's shift began at 5:30 a.m. On October 10, 2005, the claimant was absent for personal illness. The claimant did not notify the employer of this absence. On October 5, 2005, the claimant was absent for personal reasons but did not remember the specific cause for his absence. Whether the claimant notified the employer of this absence is uncertain. On September 25, 2005, the claimant was absent for a doctor's appointment and he properly reported this absence. On September 11, 2005, the claimant was absent because he had no transportation, although he did properly report this absence. On September 10, 2005, the claimant was absent for personal illness and he properly reported this absence. On September 8 and 9, 2005, the claimant was absent because he had to go to court with his son. The claimant did not report either of these absences. On August 28, 2005, the claimant was absent for a lack of transportation but he did properly report this absence. The claimant was absent on August 4 and again on August 13, 2005, for personal illness and he properly reported these absences. On September 14, 2005, the claimant received both an oral and a written warning for his absences on September 8 and 9, 2005, and was placed on a 90-day probation. On October 12, 2005, the claimant received an oral or a written warning for his absence on October 10, 2005, and his probation was extended for one year. The claimant was then absent on October 14, 2005 and was discharged. The claimant did have problems with his transportation after he lost his driver's license.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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).

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 employer's witness, Todd Beck, Complex Manager, credibly testified, and the administrative law judge concludes, that the claimant was discharged on October 14, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. Mr. Beck credibly testified that in the last one and half months of the claimant's employment he had one absence for personal illness which was not properly reported on October 10, 2005; one absence for transportation that was not properly reported on October 14, 2005; two absences to go to court with his son on September 8 and 9, 2005, which were not properly reported; one absence for personal reasons (which the claimant could not recall) which may or may not have been properly reported; one absence for transportation which was properly reported on September 11, 2005, and another absence for no transportation on August 28, 2005, which was properly reported. The administrative law judge concludes that these absences were not for personal illness or reasonable cause and/or not properly reported and are excessive unexcused absenteeism. At least three absences were because the claimant had no transportation and the administrative law judge believes that this is unreasonable. One was for personal illness but not properly reported. Two were to accompany the claimant's son to court and were not properly reported. The administrative law judge is not convinced that these were for reasonable cause and they were certainly not properly reported. One was for personal reasons but the claimant could not remember why and the administrative law judge concludes that this also was not for reasonable cause or personal illness. The claimant received an oral and written warning on September 14, 2005, and placed on a 90-day probation. The claimant received a second

warning, either oral or written, on October 12, 2005, and his probation was extended one year. Two days later the claimant was absent on October 14, 2005, and discharged.

The claimant's testimony to the contrary is not credible. Throughout his testimony he was equivocal and vague. At first the claimant denied any warnings but then conceded that he had one written warning when he was placed on a 90-day probation and finally conceded to a second warning on October 12, 2005, when his probation was extended. The claimant was fully aware that the employer was concerned about his attendance. Accordingly, the administrative law judge concludes that the claimant's absences were excessive unexcused absenteeism and disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits,

DECISION:

The representative's decision of November 9, 2005, reference 02, is affirmed. The claimant, Douglas E. Shores, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism.

kkf/kjw