

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

GREGORY E HANSON
2010 GLASS RD NE APT 306
CEDAR RAPIDS IA 52402-3438

LANDON SKYWARD ENTERPRISES INC
828 - 3RD ST NW
CEDAR RAPIDS IA 52405-2728

Appeal Number: 06A-UI-01374-JTT
OC: 01/08/06 R: 03
Claimant: Appellant (2)

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:

Claimant Gregory Hanson filed a timely appeal from the January 27, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 9, 2006. Mr. Hanson participated. Employer representative Bob Ward provided a telephone number for the hearing, but was not available at that number at the time of the hearing. Mr. Ward contacted the administrative law judge approximately four hours after the record had closed, but did not provide good cause to reopen the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gregory Hanson was employed by Landon Skyward Enterprises as a part-time telemarketer from February 21, 2005 until April 14, 2005, when owner and supervisor Bob Ward discharged him

for an excessive absences. Mr. Hanson worked approximately 25 hours per week. Mr. Hanson was scheduled to began his workday at 9:00 a.m. and end his workday at 2:00 p.m. or 3:00 p.m. The final absences that prompted the discharge occurred on April 12 and April 13. On April 12, Mr. Hanson was a "no-call, no-show" after he had consumed an excessive amount of alcohol the night before and was too ill to report to work. On April 13, Mr. Hanson was absent for reasons he does not recall. Mr. Hanson reported this absence to the employer in the afternoon, prior to the end of his scheduled shift. Mr. Hanson had no other absences during the employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Hanson was discharged for misconduct in connection with the employment based on excessive unexcused absences. It does not.

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 bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for Mr. Hanson's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the evidence must establish that his unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record indicates that Mr. Hanson's absences on April 12 and 13 were unexcused absences under Iowa law. However, these two absences did not amount to excessive absences that would disqualify Mr. Hanson for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hanson was discharged for no disqualifying reason. Accordingly, Mr. Hanson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Hanson.

DECISION:

The Agency representative's decision dated January 27, 2006, reference 01, is reversed. The claimant was discharged from the employment for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

jt/tjc