

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

ANDREW D BURGIN JR  
740 THOMAS RD  
POTEET TX 78065

MIDWEST INVESTORS OF RENVILLE INC  
GOLDEN OVAL EGGS  
1800 PARK AVE E  
PO BOX 615  
RENVILLE MN 56284-0615

Appeal Number: 05A-UI-08193-HT  
OC: 07/03/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Andrew Burgin, Jr., filed an appeal from a decision dated August 3, 2005, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 7, 2005. The claimant participated on his own behalf. The employer, Golden Oval Eggs, participated by Human Resources Manager Kevin Bushard, Pullet Manager Andrea Bakker, Complex Manager Todd Beck, and Assistant Pullet Managers Dean Honkomp and Patty Hansmeier. Exhibit A was admitted into the record.

#### 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: Andrew Burgin was employed by Golden Oval Eggs from March 22 until June 30, 2005. He was a full-time pullet on-line working 5:30 a.m. until 4:00 p.m. At the time of hire he received a copy of the employee handbook and an orientation. He was also provided with the necessary telephone numbers of supervisors he was to contact in the case of an unscheduled absence. The policy notifies employees they are to call their supervisor and speak directly to that person in the case of an absence. If the supervisor is not available, then the supervisor's supervisor must be contacted and on "up the line" until personal contact is made. Messages left on voice mail or answering machines are not acceptable.

Mr. Burgin received a written warning regarding attendance on May 25, 2005, and for failing to contact the correct person to report the absence. He was again provided with the telephone numbers he was to call. He received two other warnings for performance problems.

On June 20, 2005, he received a 90-day work review and was notified his probation was being extended for another 90 days because there were many areas where improvement needed to be seen, including attendance. The document further notified him he would be discharged if he had any other policy violations.

On June 28, 2005, Mr. Burgin called Human Resources Director Kevin Bushard at 10:09 p.m. and left a message that he was having car problems and might not be in the next day. He also called his supervisor, Patty Hansmeier, around the same time but did not leave a message for her. The next morning the claimant attempted to call a supervisor at the plant at 3:56 a.m., 4:26 a.m. and 4:56 a.m. No one was at the plant at that time and he did not leave any messages.

Mr. Bushard returned the claimant's call around 5:30 a.m. and told Mr. Burgin he was not his supervisor and he must contact his supervisor or Andrea Bakker, his supervisor's supervisor, to properly report the absence. The claimant did not attempt to contact anyone at the plant until around 1:00 p.m. when he did call Ms. Bakker and tell her he would be in shortly. When he arrived around 1:30 p.m. he was sent home pending further disciplinary action. He was notified by letter on June 30, 2005, by Mr. Bushard that he was discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant maintained he was unable to reach his supervisor to report his absence. However, he did not call Ms. Hansmeier in the morning, nor did he call Ms. Bakker until his shift was almost over. He claimed he had only been given the numbers for the plant, but this is not borne out by the information in his cell phone records which clearly shows he had both Ms. Bakker's and Ms. Hansmeier's cell phone numbers. He also did not explain why he did not try to call a supervisor closer to the start time of his shift when there was a greater likelihood they would be at the plant, if he did not want to use their cell phone numbers.

Regardless of whether he called a supervisor or not, the final absence on June 29, 2005, cannot be excused. Matters of purely personal consideration, such as oversleeping, lack of child care or transportation problems are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). He had already been warned his attendance needed to improve and that he needed to properly report the absence. In his work review and probation extension he was told his job was in jeopardy if there were any further incidents of policy violations. In the present case the claimant had a final, unexcused absence in addition to his other warnings. He was discharged for violation of known company rules and this is conduct not in the best interests of the employer. He is disqualified.

DECISION:

The representative's decision of August 3, 2005, reference 02, is affirmed. Andrew Burgin Jr. is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/pjs