

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANUEL T TREVIZO
Claimant

APPEAL NO. 07A-UI-09952-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEARSON GOVERNMENT SOLUTIONS INC
Employer

**OC: 09/23/07 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Manuel Trevizo, filed an appeal from a decision dated October 18, 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 November 13, 2007. The claimant participated on his own behalf. The employer, Pearson Government Solutions, participated by Human Resources Generalist Candice Hunter.

ISSUE:

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

FINDINGS OF FACT:

Manuel Trevizo was employed by Pearson Government Solutions from May 31, 2005 until September 24, 2007, as a full-time customer service representative. On July 10, 2007, he received a final written warning regarding his attendance and was notified the next level of discipline could be discharge.

He missed two more days after that and left early on a third occasion. On Friday, September 21, 2007, he called in and stated he was going to be absent to attend a funeral. This was for the ex-wife of his grandfather, a person not related by blood or marriage and not covered under the employer's funeral policy. Mr. Trevizo had not asked for the day off ahead of time so he could use vacation and it was considered an unexcused absence. He was discharged on Monday, September 24, 2007, by Human Resources Generalist Candice Hunter and Call Center Manager Sheila Zeithamel, for unexcused absenteeism.

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. He accumulated more points after that final warning, and the last incident was an absence not covered under the employer's funeral policy. Mr. Trevizo claimed not to know the policy but he had received a copy of the employer's policies and had access to the information on line.

The claimant was discharged for excessive, unexcused absenteeism after being warned. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of October 18, 2007, reference 01, is affirmed. Manual Trevizo is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw