

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBIN LADEHOFF**  
Claimant

**APPEAL NO. 09A-UI-02768-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**"PEAK INTERESTS LLC  
"PIZZA HUT**  
Employer

**OC: 01/25/09  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Peak Interests, L.L.C., doing business as Pizza Hut, filed a timely appeal from an unemployment insurance decision dated February 17, 2009, reference 01, that allowed benefits to Robin D. Ladehoff. After due notice was issued, a telephone hearing was held March 11, 2009, with Mr. Ladehoff participating and presenting additional testimony by Jamie Flaherty. Area Coach Glenn Johnson and General Manager Megan Owen participated for the employer. Exhibits One and A were admitted into evidence.

**ISSUE:**

Was the claimant discharged for excessive unexcused absenteeism?

**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: Robin D. Ladehoff was employed by Pizza Hut from February 26, 2008 until he was discharged January 23, 2009. He last worked as the morning opener. The final incident leading to his discharge occurred when he was approximately one and one-half hours late on January 22, 2009. Mr. Ladehoff was approximately 51 minutes late on December 12, 2008 because he overslept. During the week ending December 30, 2008, Mr. Ladehoff was tardy because his vehicle would not start. The claimant has received unemployment insurance benefits since filing a claim effective January 25, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). In the court's analysis, absenteeism includes partial day absences such as tardiness. While absence due to medical conditions is not held against an employee for unemployment insurance purposes if the employee has provided proper notification to the employer, tardiness or full day absence due to matters of personal responsibility are considered unexcused regardless of notification. See Higgins, and 871 IAC 24.32(7). The evidence in the record establishes that Mr. Ladehoff was tardy because of matters of personal responsibility on at least three occasions between December 12, 2008 and January 22, 2009. This is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Ladehoff must repay the benefits he has already received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated February 17, 2009, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of whether he must repay benefits already received is remanded to the Unemployment Insurance Services Division.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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