

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHIAN M ROSS

Claimant

APPEAL NO. 09A-UI-05173-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST CAMDEN & HIGHLAND

Employer

OC: 03/01/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Rhian M. Ross filed a timely appeal from an unemployment insurance decision dated March 25, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held April 29, 2009 with Mr. Ross participating. The employer, East Camden & Highland, did not provide the name and telephone number of any witnesses.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Rhian M. Ross was employed by East Camden & Highland from May 2008 until he was discharged February 24, 2009. The final incident leading to his discharge occurred on February 2, 2009. Mr. Ross was late arriving at work because of a scheduled therapy session for a job-related injury. All absences and all instances of tardiness were because of this injury and his medical treatment. He provided the employer with medical documentation and notified the employer in advance of impending absences or late arrivals.

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 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate in the hearing. The claimant's testimony that he was discharged because of absences, all of which were because of a work-related injury and all of which had been reported to the employer, is uncontradicted. The administrative law judge finds no evidence of misconduct in this record. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 25, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs