

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL BUCK**  
Claimant

**APPEAL NO. 11A-UI-10343-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KPTOO INC  
MCDONALD'S**  
Employer

**OC: 07/03/11**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, McDonald's, filed an appeal from a decision dated August 1, 2011, reference 01. The decision allowed benefits to the claimant, Daniel Buck. After due notice was issued, a hearing was held by telephone conference call on August 30, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Store Manager Nicole Rensink.

**ISSUE:**

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

**FINDINGS OF FACT:**

Daniel Buck was employed by McDonald's from September 24, 2010 until June 2, 2011 as a part-time crew person. He had received written warnings regarding his attendance on November 15, 2010, and May 14, and 17, 2011. Store Manager Nicole Rensink had told him personally his job was in jeopardy because of his attendance. He missed work because he did not have transportation and had difficulty finding a ride to work.

His last day of work was May 28, 2011, and he was no-call/no-show for scheduled shifts on May 31, June 1, and June 2, 2011. Ms. Rensink left him a voice mail message notifying him he was discharged on June 2, 2011.

Daniel Buck filed a claim for unemployment benefits with an effective date of July 3, 2011. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

## 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. His final absences were no-call/no-shows to work for three days. Matters of purely personal consideration, such as lack of transportation, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). He was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

**DECISION:**

The representative's decision of August 1, 2011, reference 01, is reversed. Daniel Buck is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw