

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY D PEASE

Claimant

CLINTON STAFFING COMPANY

ALLSTAR STAFFING

Employer

APPEAL NO: 10A-UI-09749-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/06/10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 2, 2010, reference 01, that held he voluntarily quit without good cause attributable to his employer on June 10, 2010, and benefits are denied. A telephone hearing was held on August 25, 2010. The claimant participated. Jane Brown, HR Representative, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work on assignment for the employer at Clausen Warehouse on February 7, 2009. The claimant was put on attendance probation on May 25, 2010 for missing too much work. The claimant had missed work due to personal reasons involving family issues.

The claimant requested to leave work early for a personal reason on June 10. The employer granted the claimant's request after deliberation, but upon condition he would agree to a 30-day extension of his attendance probation. The claimant was arrested and incarcerated at the Jackson County jail. The claimant failed to call in and to report his absence from work on June 11. After the claimant was released from jail about 10:00 a.m., he came into work over the noon hour to get his paycheck. The employer terminated the claimant for his failure to call in or report for work that day in light of his attendance probation.

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(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 administrative law judge concludes the employer discharged the claimant for misconduct in connection with employment due to excessive unexcused absenteeism on June 11, 2010

The employer gave the claimant a reprieve from his May 25 attendance probation by allowing him to leave work early for a personal on June 10. The claimant agreed to extended attendance probation. Less than 24-hours later, the claimant is a no-call, no-show to work due to his incarceration that is an unexcused absence and the final act of misconduct that disqualifies him from receiving benefits.

DECISION:

The department decision dated July 2, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on June 11, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs