

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY L DOYEN
Claimant

APPEAL NO. 10A-UI-04033-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE
Employer

**Original Claim: 01/31/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Timothy Doyen, filed an appeal from a decision dated March 9, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 29, 2010. The claimant participated on his own behalf. The employer, Five Star Quality Care, participated by Human Resources Assistant Darlene Brown and PM Coordinator Crystal Colwell.

ISSUE:

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

FINDINGS OF FACT:

Timothy Doyen was employed by Five Star Quality Care from May 20, 2008 until January 4, 2010, as a full-time direct support professional working 1:30 p.m. until 10:00 p.m. He received progressive discipline for absenteeism and tardiness on July 13, September 15, and November 20, 2009. The final warning notified him his job was in jeopardy.

The claimant was late to work again on December 30, 2009, and January 3, and 4, 2010. He gave no specific reason, only that he “just didn’t get going.” He was discharged by PM Coordinator Crystal Colwell on January 4, 2010, for 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 and tardiness. In spite of the warning, he was tardy three times in one pay period. The reason for the tardiness was lack of organization and just getting where he needed to go in time. Matters of purely personal consideration are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). This is excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of March 9, 2010, reference 01, is affirmed. Timothy Doyen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw