

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOMMY M GOWDY**  
Claimant

**BROWN CUSTOMER DELIGHT GROUP INC**  
Employer

**APPEAL NO. 13A-UI-09563-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/14/13**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated August 14, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism on July 11, 2013, and benefits are denied. A hearing was held on September 24, 2013. The claimant participated. Kelly Betts, Office Manager, Ruben Adams, GM, and Jackie Nolan, Representative, participated for the employer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a part-time crew member from January 12, 2012 to July 11, 2013. The employer told claimant he was terminated on July 16 without explanation. He was not issued a written termination statement.

During the course of employment, claimant was not issued any written discipline for being a no-call/no-show to work. The employer did not offer any written documentation in support of its position in this hearing claimant was a voluntary quit for a fourth no-call/no-show to work. The employer offered department fact-finding information claimant was discharged.

**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 that the employer failed to establish misconduct in the discharge of the claimant on July 11, 2013, for excessive "unexcused" absenteeism.

The employer failed to offer documentation to establish claimant had been disciplined for any pre-July 11 no-call/no-show to work, and it failed to offer a witness to establish that it had. Claimant denies this conduct. He also states he worked on July 6 that employer contends he did not. The employer failed to refute it.

The employer offered evidence in support of a claimant discharge at department fact-finding and it now contends he was a voluntary quit for a fourth no-call/no-show to work in this hearing. Job disqualifying misconduct is not established due to employer lack of evidence and employment separation inconsistency.

**DECISION:**

The decision of the representative dated August 14, 2013, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on July 11, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/pjs