

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM E CLINE
Claimant

APPEAL NO. 12A-UI-09285-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT
Employer

OC: 02/12/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Belle/Sioux City Riverboat (Belle Sioux City), filed an appeal from a decision dated July 26, 2012, reference 02. The decision allowed benefits to the claimant, William Cline. After due notice was issued, a hearing was held by telephone conference call on August 28, 2012. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Business Partner Glauca Steckelberg and Manager of Security Manager Pat Brentlinger.

ISSUE:

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

FINDINGS OF FACT:

William Cline was employed by Belle Sioux City from March 9 until June 28, 2012 as a full-time customer service officer. At the time of hire, he received a copy of the employee handbook. It contains the attendance policy and the requirements for reporting absences. On weekdays, an employee must report to a direct supervisor at least one hour before the start of the shift if they are going to be absent. On weekends and holidays, the absence must be reported four hours before the shift.

Attendance is kept by points, with an absence accruing one point, tardies one-half point, and no-call/no-shows five points. The first warning is given at seven points and discharge occurs at ten points.

Mr. Cline had six absences for six points as of June 24, 2012. He had gained one point each for six absences beginning April 22 through June 24, 2012. These were all properly reported, but the reason is not known, as the employer has a no-fault policy that does not require an employee to give the reason for the absence.

June 25, 2012, a Monday, was his usual day off, but his direct supervisor, Rick Wynn, had told him at least three times during the week leading up to that date that he would have to work on his usual day off. Several security employees had left and mandatory overtime was being imposed. The claimant's name was written on the schedule for the shift that evening, but he was no-call/no-show to work. That accrued five more points and he was over the ten-point level for discharge. He was notified of the discharge by Mr. Wynn on June 28, 2012.

William Cline has received unemployment benefits since filing an additional claim with an effective date of July 1, 2012.

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 was discharged for excessive, unexcused absenteeism. Because of the no-fault policy, the employer does not know the reasons for the absences. Because the claimant did not participate, no evidence was presented whether the absences were due to illness, transportation problems, oversleeping, or lack of child care. He has not presented any reason for being no-call/no-show to work on the final day of June 25, 2012.

Mr. Cline has therefore failed to rebut the employer's testimony that his absences were unexcused. Under the provisions of the above Administrative Code section, excessive, unexcused absenteeism is misconduct and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 26, 2012, reference 02, is reversed. William Cline is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, 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