

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW R FRY
Claimant

APPEAL NO. 10A-UI-00309-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIZZA HUT OF CENTERVILLE IA INC
Employer

OC: 11/29/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 29, 2009, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on February 15, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Cindy Cowan participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a shift manager from December 4, 2008, to November 23, 2009. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to personally notify their supervisor if they were not able to work as scheduled. The claimant had a history of calling in sick for work and was warned about his excessive absenteeism on June 9, 2009, after he had called in sick nine times in 2009. He continued to call in sick or have his girlfriend call in sick for him after the warning on June 14, July 20, July 25, August 13, August 25, August 27, October 5, October 11, and October 16.

In early November, the restaurant manager, Cindy Cowan, got a commitment from the claimant to make sure he reported to work as scheduled during the time when the assistant manager was on vacation at the end of November. The claimant's girlfriend called in on November 20 and said the claimant would not be at work because he was sick. Cowan called the claimant back and reminded him that he needed to work because they were short-staffed for managers. The claimant reported to work and did not appear sick.

The claimant was scheduled to work from 10:00 a.m. to 4:00 p.m. on November 22. At about 3:00 a.m. on November 22, he called Cowan and said he was going to jail due to a domestic dispute with his girlfriend. He confessed that he was not sick on November 20, but instead his girlfriend did not want him to go to work. He told Cowan that he did not know if he would be out

of jail in time to work. The claimant did not report to work and did not call again that day. He went to the restaurant in the evening for dinner and checked his schedule.

The claimant was scheduled to work from 8:00 a.m. to 3:00 p.m. on November 23. He called a supervisor that was coming in to work with him that morning at 8:57 a.m. and told her to get there right away because he was leaving because he was stressed out. When the supervisor arrived the claimant was out in the parking lot and had left the restaurant without a supervisor. The shift supervisor urged the claimant to return to work, but the claimant insisted he was too upset to work and left. The claimant did not call the manager or assistant manager regarding his leaving work early as required.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides that 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 excessively absent from work, his final absences were unexcused, and he failed to call in properly on November 22 and 23. Work-connected misconduct has been shown.

DECISION:

The unemployment insurance decision dated December 29, 2009, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css