

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALTER I LONG
Claimant

APPEAL NO. 10A-UI-05058-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

**OC: 02/28/10
Claimant: Appellant (1)**

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 March 22, 2010, reference 01, that held he was discharged for excessive unexcused absenteeism on February 17, 2010, and benefits are denied. A hearing was held on May 17, 2010. The claimant did not participate. Sara Cross, HR Coordinator, participated for the employer. Employer Exhibits 1 -7 was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time checker from December 1, 2008 to February 11, 2010. The claimant received the employer attendance policy that provides for progressive discipline. The claimant received progressive discipline for attendance policy violations from a verbal warning on June 25, 2009 to written warnings on September 22, 2009 and January 26, 2010.

The claimant was scheduled to return to work on February 16, 2010 after taking some vacation days on February 13 & 15. The claimant called-in on February 16 that he would miss work due to a snowstorm. The final absence put the claimant over the threshold for excessive absences and he was discharged from employment on February 17.

The claimant was not available when called for the hearing at the phone number he provided.

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 established misconduct in the discharge of the claimant on February 17, 2010, for excessive "unexcused" absenteeism.

The employer issued the claimant progressive discipline to let him know he was close to termination for excessive absences. The claimant knew he needed to return to work on the 16th after taking some vacation, but failed to do so.

DECISION:

The decision of the representative dated March 22, 2010, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on February 17, 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

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