

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A PETERS
Claimant

APPEAL NO. 10A-UI-00413-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

**OC: 02/15/09
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed from a department representative's decision dated January 5, 2010, reference 04, that held he was discharged for misconduct on December 14, 2009, and benefits are denied. A telephone hearing was held on February 17, 2010. The claimant participated. Julie Sumner, Employee Services Assistant, participated for the employer. Employer Exhibit One 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 laborer from April 20, 2009 to December 14, 2009. The claimant received an employee handbook that contains the absenteeism/tardiness policy of the employer.

The employer issued a verbal warning to the claimant on July 6 for a tardy and two no-call/no-shows to work. A written warning was issued to the claimant on August 29 for a tardy. A written warning with two-day suspension was issued to the claimant on November 24 for tardiness and absences. The claimant was told by her supervisor that a further incident would result in discharge. The claimant was late to work ten minutes on December 14, 2009 and terminated from work.

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 December 14, 2009, for excessive "unexcused" absenteeism/tardiness.

While some of claimant's absences were due to illness, most of his attendance issues were due to tardiness. Transportation problems does not excuse being late to work. The claimant received a final warning with a suspension; he was told that a further incident would mean discharge.

DECISION:

The decision of the representative dated January 5, 2010, reference 04, is affirmed. The claimant was discharged for misconduct in connection with employment on December 14, 2009. 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

rls/pjs