

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASENO D YOUNG
Claimant

APPEAL NO. 10A-EUCU-00047-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSS HOLDINGS LLC
Employer

OC: 01/25/09
Claimant: Appellant (5)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Caseno Young, filed an appeal from a decision dated January 14, 2010, reference 08. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 3, 2010. The claimant participated on his own behalf. The employer, Ross Holdings, participated by Corporate Office Manager Diana Roberts and Director of Outbound Operations Shannon Schmidt.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Caseno Young was employed by Ross Holdings from October 14, 2009 until December 14, 2009 as a part-time telemarketer. He received a copy of the employee handbook which requires employees to call in prior to the start of the shift if they are going to be absent. They must talk directly to their supervisor.

He received a final written warning on December 8, 2009, for absenteeism, and the document advised him his job was in jeopardy if he missed any more work. On December 10, 2009, he called in absent but did not talk with his supervisor. The supervisor to whom he did speak told him he should call back and talk to his supervisor but he did not do so. On December 12, 2009, he was no-call/no-show to work. He felt he did not have to do so because he had told the other supervisor on December 10, 2009, he would not be in for five days. His own supervisor, Mike Zorney, called him at the end of the work day on December 12, 2009, to notify him he had been 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(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 had been advised his job was in jeopardy as a result of his absenteeism. In spite of the warning he did not come to work or properly notify his supervisor on December 10 or 12, 2009, that he was going to be absent. Although he may have told the other supervisor he had been excused from work by his doctor for five days, there is no indication he provided that excuse to the employer or that the employer agreed he did not have to call in during that time.

A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). But in this case the absences were not properly reported and are therefore unexcused. The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of January 14, 2010, reference 08, is modified without effect. Caseno Young was discharged for misconduct. Benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs