

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDWIN L DAYE**  
Claimant

**APPEAL NO. 10A-UI-15597-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING COMPANY**  
Employer

**OC: 09/26/10  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Edwin Daye filed an appeal from a representative's decision dated November 1, 2010, reference 02, which denied benefits based on his separation from Jacobson Staffing Company (Jacobson). After due notice was issued, a hearing was held by telephone on January 7, 2011. Mr. Daye participated personally. The employer participated by Nate Cloe, Assistant Operations Manager.

**ISSUE:**

At issue in this matter is whether Mr. Daye was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Daye began working through Jacobson on April 27, 2008 and was assigned to work with Titan Tire. He worked full time in brake assembly. He was discharged because of his attendance.

Mr. Daye was absent for unknown reasons on December 23, 2009 and June 10, 2010. He was over an hour late reporting to work on January 15, 2010. He was absent on June 28 but did not call to report the absence. He later advised the employer that the absence was due to the fact that he had diarrhea. He was absent on August 11 because of flooding in his home. Mr. Daye received several warnings about his attendance, the last of which was on August 16, 2010. He was also suspended for two days at that time due to his attendance. The absences that prompted his discharge began on September 20.

Mr. Daye called his supervisor on September 19 to report that he would be absent on September 20. He did not call or report for work on September 21. He did not respond to phone messages left by the employer on that date. He did not report for work or call on September 22 or September 23. The employer tried to reach Mr. Daye by phone on both dates, to no avail. A female left some documents from Mr. Daye on September 23. Mr. Daye himself

did not contact the employer until September 24. The decision to discharge was made on September 28. Attendance was the sole reason for the separation.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. Daye had at least two periods of unexcused absenteeism (January 15 and June 28, 2010) before September of 2010. He had also received several warnings that his attendance was jeopardizing his continued employment. In spite of the warnings, Mr. Daye had unexcused absences on September 21, 22, and 23. He may have had legitimate reasons for being absent on all three days. However, the fact that he did not call the employer to report the absences renders them unexcused. The evidence failed to establish any justification for the failure to call the employer to report that he would be absent. Given his prior warnings, the administrative law judge considers Mr. Daye's three consecutive unexcused absences beginning September 21 to be sufficient to establish excessive unexcused absenteeism. Excessive unexcused absenteeism is a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, benefits are denied.

**DECISION:**

The representative's decision dated November 1, 2010, reference 02, is hereby affirmed. Mr. Daye was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs