

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEY D POTTER
Claimant

APPEAL NO. 08A-UI-07104-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALGREEN CO
Employer

**OC: 07/06/08 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Joey Potter, filed an appeal from a decision dated August 1, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 20, 2008. The claimant participated on his own behalf and with a witness Allen Potter. The employer, Walgreen, participated by Store Manager Jill Stoll.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Joey Potter was employed by Walgreen from November 9, 2007 until June 20, 2008 as a full-time assistant manager. Mr. Potter was scheduled to work on June 6, 2007, but his father, Allen Potter, notified Executive Assistant Manager Phil Chapman the claimant would not be in to work without giving a reason. The next day Allen Potter called and spoke with Store Manager Jill Stoll to say Joey Potter would not be in to work for an undetermined amount of time because he was in jail. The next scheduled day of work for the claimant was June 9, 2008, and again Ms. Stoll and Allen Potter spoke about the claimant's absence but no additional information was available at that time. The claimant stated at the hearing he had been arrested for drunk driving in the early morning hours of June 6, 2008.

Joey Potter was no-call/no-show to work for his scheduled shifts on June 10, 11, 12, 13, 14 and 15, 2008. He was not scheduled after that time and was released from jail the afternoon of June 18, 2008, but did not contact Ms. Stoll until the next day. She requested him to come to the store June 20, 2008, at which time he was 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 was absent for a total of nine consecutive shifts, six of them no-call/no-shows. The reason for his absences was that he was in jail for OWI. Even though the employer may have been notified about some of his absences, the reporting of the absence does not automatically mean it is excused. Matters of purely personal consideration, such as being incarcerated for drunk driving, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Joey Potter 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 August 1, 2008, reference 01, is affirmed. Joey Potter is disqualified and 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/css