

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODRIGO C GONZALEZ**  
Claimant

**APPEAL NO: 11A-UI-14969-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 04/17/11**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 16, 2011 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Paula Mack, Steve Ruden and Mandy Hirschman appeared on the employer's behalf. Ike Rocha interpreted the hearing. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 9, 2011. The claimant worked in the warehouse. The employer requires an employee to notify the employer when he is unable to work as scheduled. (Employer Exhibit One.) The written policy does not state that three no-call/no-show incidents results in an employee's termination, but the employer tells employees this. The employer told the claimant this when he did not call or report to work on October 4 and 9, 2011.

The claimant did not call or report to work on October 4. The claimant had transportation issues on October 4 and could not get to work. When his supervisor, Loren, talked to him, the claimant understood this could not happen again. The claimant had not called when he had transportation problems because he did not know the employer's phone number.

On October 9, the claimant did not call or report to work. The claimant was at the hospital with his sick child and did not think about notifying the employer. When the employer's secretary talked to him and explained the employer's rules, the claimant understood he could be discharged the next time he did not call or report to work as scheduled.

The claimant did not call on October 27 to report to he was unable to work. His cell phone had been disconnected. He did not think about borrowing a cell phone to notify the employer. The claimant did not go to work on October 27 because he was trying to get his driver's license renewed, but could not until he paid off traffic fines. The claimant worked in Cherokee or 90 miles from his residence and had to drive to work.

The employer discharged the claimant on October 28 because he had not called or reported to work three times during his employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

After the claimant did not call or report to work on October 9, he understood the next time he did not call or report to work as scheduled, he would be discharged. The claimant did not report to work on October 27, because he had to renew his driver's license. The claimant did not call because his cell phone had been disconnected. He did not think about borrowing someone's phone to notify the employer that he was unable to work that day. Since the claimant understood his job was in jeopardy, the fact his cell phone had been disconnected does not excuse him from calling the employer to report he is unable to work as scheduled. The employer discharged the claimant for reasons that constitute work-connected misconduct. As of October 24, 2011, the claimant is not qualified to receive benefits.

#### **DECISION:**

The representative's November 16, 2011 determination (reference 03) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 16, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css