

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RICKY D HOWE
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**CHRISTENSEN FAMILY FARMS INC
23971 COUNTY RD 10
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SLEEPY EYE MN 56085**

**Appeal Number: 05A-UI-06966-LT
OC: 06-12-05 R: 03
Claimant: Appellant (5)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 29, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 25, 2005. Claimant did participate. Employer did participate through Misty Gasset. Monica Wilson observed. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time nursery manager from March 2004 through June 13, 2005, when he was discharged by Dale Swartz for leaving early the previous Thursday, June 9 without notice to anyone. Claimant maintained he had left due to vomiting related to a migraine

headache, but Charles Lacey (Tommy) noted that claimant was “mad” and had removed his personal belongings and phone and pager numbers from the bulletin board. There was unclear communication with Lacey about who would work June 10. Claimant did not work June 11 but recorded on his time sheet that he had worked. He reported and left without working on Sunday, June 12 but did leave a message for Kent Naughton. Naughton and Swartz had warned claimant on May 25 that he must communicate with coworkers and Naughton and Swartz when he would be absent from work since days off changed according to the work load. (Claimant’s Exhibit A)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that he must communicate with his coworkers and supervisors about absences from work. Claimant’s claim that he left work on June 9 due to a migraine headache is not credible, as Lacey observed him to be “mad” and claimant removed his telephone and pager contact numbers from the bulletin board. Thus, the final absence on June 9 was not excused because it was not reported to a supervisor. Furthermore, there was not clear communication with Lacey about who would work on June 10. The final absence, after having been warned to communicate with coworkers and supervisors, is considered misconduct. Benefits are withheld.

DECISION:

The June 29, 2005, reference 01, decision is modified with no change in effect. The claimant was discharged from employment due to excessive, unexcused absenteeism with lack of notice to employer after having been warned. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dml/kjw