

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON W ROSENWINKEL
Claimant

APPEAL NO. 10A-UI-08401-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LUBRICATIONS OF DES MOINES #3
JIFFY LUBE**
Employer

OC: 04/25/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Jiffy Lube, filed an appeal from a decision dated June 8, 2010, reference 01. The decision allowed benefits to the claimant, Jason Rosenwinkel. After due notice was issued, a hearing was held by telephone conference call on July 29, 2010. The claimant participated on his own behalf and with Ildra Rosenwinkel. The employer participated by President Amy Carlson and Store Manager Shane Champlin.

ISSUE:

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

FINDINGS OF FACT:

Jason Rosenwinkel was employed by Jiffy Lube from January 20, 2009 until April 24, 2010 as a full-time assistant manager. Store Manager Shane Champlin had given the claimant at least three verbal warnings about tardiness. The claimant had been late several times due to oversleeping or lack of transportation. On April 20, 2010, he was given a written warning when he was two hours late to work due to oversleeping again.

The claimant was injured at work on April 22, 2010, and sent home after receiving medical treatment. He was also sent home early on April 23, 2010, because he said he was still not feeling well. On April 24, 2010, he was no-call/no-show to work. Two other employees said they had seen him at a night club the night before and believed that was the reason he was absent.

Mr. Champlin tried to call the claimant that day, but Mr. Rosenwinkel did not answer and the phone did not have a voice mail feature. When the store closed at 5:00 p.m., the manager stopped by the claimant's house and asked why he had been no-call/no-show to work. Mr. Rosenwinkel said he was still sick and the night club had had nothing to do with it. The manager told him at that time he was fired and asked for his key.

Jason Rosenwinkel has received unemployment benefits since filing a claim with an effective date of April 25, 2010.

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 attendance was unsatisfactory. Four days later he was no-call/no-show to work. Even if he was absent due to illness, it was not properly reported and therefore unexcused. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Mr. Rosenwinkel said he did not awaken until noon but could provide no reason why he did not call and notify the employer of the situation at that time. He did not offer any explanation as to why he did not have his spouse call on his behalf earlier in the day.

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.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 8, 2010, reference 01, is reversed. Jason Rosenwinkel is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw