

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILHELM W COOPER
Claimant

WESLEY RETIREMENT SERVICES INC
Employer

APPEAL NO. 11A-UI-02922-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/30/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated March 4, 2011, reference 01, that held the claimant was discharged for excessive unexcused absenteeism on January 28, 2011, and benefits are denied. A hearing was held in Des Moines, Iowa on April 26, 2011. The claimant participated. Sarah Frost, HR partner, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began work in May 2009 as a part-time C.N.A., and last worked for the employer the weekend of January 15/16, 2011. The claimant worked every other weekend on either the 2:00 p.m. to 10:00 p.m. or 10:00 p.m. to 6:00 a.m. shift. The claimant worked an occasional weekday when requested to do so.

The employer asked the claimant on January 21 (Friday) if he could work that weekend of January 22/23, and he consented. He believed it would be for the 2:00 p.m. work shift. The claimant forgot to report to work on Saturday. When he received an employer telephone message about reporting to work on Saturday about 9:00 p.m., he called the employer and spoke with an employee to see if he was on the schedule for the following day. He was told he was not on the schedule to work, so he did not report to work.

The employer discharged claimant on January 28, 2011 for failing to report to work on January 22, and 23 in violation of policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on January 28, 2011, for excessive "unexcused" absenteeism.

The claimant verbally consented to work an unscheduled weekend for the employer and forgot to report to work on Saturday. He called the employer to check to see if he was on the schedule for the following day, and he did not report when told he was not on the schedule to work Sunday. The claimant had an excusable reason for not reporting to work on Sunday, and excessive unexcused absenteeism is not established.

DECISION:

The decision of the representative dated March 4, 2011, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on January 28, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs