

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS L SUTTON

Claimant

APPEAL NO: 09A-UI-09707-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC

Employer

OC: 05/31/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

Family Dollar Services Inc. filed a timely appeal from a fact-finder's decision dated June 29, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 22, 2009. Mr. Sutton participated personally. The employer participated by Ms. Leah Douglas, Human Resource Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Douglas Sutton was employed as a full-time shipping worker for Family Dollar Services from August 9, 2004 until June 1, 2009 when he was discharged for exceeding the company's attendance policy.

Under the policy employees are subject to discharge if they are absent 30 days within a 12-month rolling period. Mr. Sutton was aware of the policy and had received a final warning on March 31, 2009. The claimant had been absent on a number of occasions due to intermittent health issues. The claimant had provided medical documentation to support each absence and properly called in each absence in conformity with company policy.

Although the claimant had not reached 30 days of absence he had accumulated 241 hours of absence and it was considered exceeding the time allowed to be gone from work based upon his absence of May 27, 2009. On that day the claimant was ill and had properly called in.

It is the employer's position that the claimant could have invoked the provisions of the Family Medical Leave Act to protect himself from being discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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. 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). The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. The evidence in the record establishes that Mr. Sutton called in each time he was going to be absent due to illness to properly report his impending absence. The issue of whether the claimant is able to invoke the provisions of the Family Medical Leave Act is not dispositive of the issue of qualification for benefits under the Iowa Employment Security Act.

DECISION:

The June 29, 2009, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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