

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEAN A DEVRIES

Claimant

APPEAL NO. 06A-UI-10689-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC

Employer

**OC: 09/24/06 R: 01
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the decision of the representative dated October 23, 2006, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 20, 2006. The claimant participated. The employer participated by Ann Frye, Manager.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer or whether the claimant was discharged for misconduct connected to the employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record finds: The claimant worked for this employer from March 20, 2006 until September 28, 2006, when he was discharged from employment. Mr. DeVries worked as a sales associate on a full-time basis and was paid by the hour. His immediate supervisor was Ann Frye.

On September 28, 2006, Mr. DeVries called his employer to report that he would not be able to report to work at 11:00 p.m. that evening as he was sick and unable to report. The claimant was instructed to call another worker and to attempt to secure a replacement, and did so. Subsequently, the employee who was working the 2:00 p.m. to 11:00 p.m. shift agreed to work until 1:00 a.m. The claimant, who was still sick, agreed to lay down “for a couple of hours” and to try to report at 1:00 a.m. if he were physically able to do so. The claimant continued to be ill and did not awaken. When he awoke the shift had ended. Therefore, he did not provide any further notification to his employer. Subsequently, Mr. DeVries contacted the store manager in an attempt to determine status. The claimant was told at that time that if he did not possess a doctor’s excuse he would be discharged from employment. The claimant had not gone to a physician at that time for financial considerations and his physical condition had subsequently improved. The claimant was unable to provide a doctor’s excuse, and was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge having reviewed the hearing record finds that the claimant's discharge took place under nondisqualifying conditions.

Here, the evidence establishes that Mr. DeVries followed a reasonable course of action by notifying his employer as soon as possible in advance of his scheduled work shift that he was sick and unable to report to work due to illness. The claimant attempted to secure a replacement worker but was unable to do so. At the employer's urging, the claimant agreed to attempt to report to work later in the shift if he was physically able to do so. It was agreed that the claimant would lay down "for a couple of hours" and then the claimant would "try" to report if he was physically able. The evidence establishes that Mr. DeVries continued to be ill and did not awaken after one or two hours of sleep and, thus, was precluded from providing any further notification to the employer due to factors that were beyond his control. Mr. DeVries was not scheduled to work the following day and when he contacted the employer he was informed that he could not return to work unless he possessed a doctor's excuse to cover the absence in question. As Mr. DeVries had not gone to a medical doctor due to financial considerations when he was unable to provide the excuse he was discharged. The administrative law judge finds that the claimant's absence was due to illness and that the claimant properly notified the employer of his impending absence to the best of his ability. Absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer. Higgins v. Iowa Department of Job Service, 350 N.W. 2d 187 (Iowa 1984).

While the employer may have made a good management decision by terminating Mr. DeVries, for the above-stated reasons the administrative law judge finds that the claimant's conduct did not rise to the level of an intentional disregard for the employer's interests and standards of behavior and, thus, was nondisqualifying.

DECISION:

The decision of the representative dated October 23, 2006, reference 01, is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided he that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css