

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNY L MONSMA
Claimant

APPEAL NO. 11A-UI-13819-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/28/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Denny L. Monsma filed a timely appeal from an unemployment insurance decision dated October 14, 2011, reference 02, that disqualified him for benefits. After due notice was issued, a telephone hearing was held November 15, 2011. Although Mr. Monsma had provided a telephone number at which he could be contacted, the number was answered by a recording at the time of the hearing. The administrative law judge left a message for the claimant to call the Appeals Bureau if he wished to participate. There was no further contact from the claimant. Area Supervisor Bo Knop and Store Manager Lauren Alphson participated for the employer, Casey's Marketing Company. Exhibit 1 was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Denny L. Monsma was employed as a donut maker by Casey's Marketing Company from April 4, 2011, until he was discharged September 1, 2011. He was discharged because of poor attendance. The last incident was Mr. Monsma's absence from a mandatory meeting on August 28, 2011. Mr. Monsma stated that he had spent the previous evening at the hospital because he had medical power of attorney for a friend. He was absent without giving a reason on August 23, 2011. He was absent on August 19, and 22, 2011, because his mother "was not doing well."

Mr. Monsma's father died in May 2011. The employer gave Mr. Monsma five days of bereavement leave with pay at the time. He began missing work on July 20, 2011. On most occasions, he stated that he was absent because he was grieving his father's death. On August 6, 2011, he was absent without contact.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters such as personal illness that are beyond an individual's control are considered to be excused, provided the individual properly reports the absence to the employer. See Higgins and 871 IAC 24.32(7).

The evidence persuades the administrative law judge that the underlying cause of most of the claimant's absences was grief, an emotion with which the administrative law judge has personal knowledge. There is no evidence in the record of the claimant seeking medical or counseling treatment for his grief. There is evidence, however, of absences for which the stated reason was other than personal grief, including one absence without any contact. Given the evidence in this record, the administrative law judge concludes that the claimant was discharged for excessive unexcused absenteeism. Benefits are withheld.

DECISION:

The unemployment insurance decision dated October 14, 2011, reference 02, is affirmed. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw