# IOWA WORKFORCE DEVELOPMENT UNEMPLOYMENT INSURANCE APPEALS

THOMAS B SHULTZ Claimant

# APPEAL NO. 08A-UI-09881-AT

ADMINISTRATIVE LAW JUDGE DECISION

WELLS DAIRY INC Employer

> OC: 11/18/07 R: 01 Claimant: Appellant (1)

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

Section 96.5-2-a – Discharge for Misconduct

# STATEMENT OF THE CASE:

Thomas B. Shultz filed a timely appeal from an unemployment insurance decision dated October 14, 2008, reference 02, that disqualified him for benefits. After due notice was issued, a telephone hearing was held November 14, 2008, with Mr. Shultz participating. Bill Sitzman and Alfredo Moreno testified for the employer, Wells Dairy, Inc., which was represented by Alyce Smolsky of TALX UCM Services.

#### **ISSUE:**

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

# FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Thomas B. Shultz was employed by Wells Dairy, Inc., from January 23, 2006, until he was discharged August 8, 2008. He last worked as a relief operator. Mr. Shultz was absent without contact on August 1 and August 2, 2008, because he was incarcerated. He was absent for a half-day on April 26, 2008, for an unknown reason. Mr. Shultz received warnings under the employer's attendance policy on January 11, February 14, June 12, and June 30, 2008.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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, a concept that includes full- and partial-day absences, is one form of misconduct. See <u>Higgins v. Iowa Department of Job Service</u>, 350 N.W.2d 187 (Iowa 1984). Absence due to medical conditions and other excusable reasons, however, are considered excused for unemployment insurance purposes, provided the employee properly reports the incident to the employer. See <u>Higgins</u> and 871 IAC 24.32(7).

The evidence in the record establishes that Mr. Shultz was absent on August 1, and August 2, 2008, because he was incarcerated. Whether or not he properly reported the absences to the employer, these absences were for matters of personal responsibility and cannot be considered to be excused. The evidence also establishes a half-day absence on April 26, 2008. Neither the claimant nor the employer knew the reason for the absence. The administrative law judge concludes that it must be considered unexcused. Three unexcused absences in just over three months, during which time the claimant received two warnings for attendance, is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

# DECISION:

The unemployment insurance decision dated October 14, 2008, reference 02, is affirmed. Benefits are withheld until the claimant has worked in and has 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