

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY D ADAMS
Claimant

APPEAL NO. 10A-UI-11908-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/18/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 17, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 5, 2010. Claimant participated. Employer participated through manager general merchandise Nick Burke and was represented by Kyle Belew of Unemployment Insurance Services.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a night stocker and was separated from employment on July 18, 2010. His last day of work was July 4, 2010. He was a no call-no show on July 14, 17, and 18, 2010. His immediate supervisor was Steve Ruggenberg. Had he reported to work with a doctor's excuse he would have been allowed to continue working. He told employer he was off work from July 5, 8, 10, and 11, 2010 for medical reasons but did not present the employer with the requested doctor's excuse. He had been given a last chance warning about attendance on June 24, 2010 and was instructed he would have to notify Burke of any further absences. Burke told claimant on July 10 and 12 that he was not fired but he wanted medical documentation to excuse the absences. Burke did not report for work or contact Burke because he thought he would be fired if he did not present the excuse by July 13 and he did not know he was scheduled to work but he did not mail it, ask for an extension of time, or explain the circumstances to Burke and did not call for his schedule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. 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). Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that he must present medical documentation for the absences to be considered excused but he failed to do so or report for work or communicate further with the employer. Benefits are withheld.

DECISION:

The August 17, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs