

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMUEL L ANDERSON**  
Claimant

**APPEAL NO. 10A-UI-09691-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**Original Claim: 05/23/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated July 6, 2010, reference 01, which denied benefits based upon his separation from Hy-Vee, Inc. After due notice was issued, a telephone hearing was held on August 23, 2010. The claimant did participate. The employer participated by Tim Spier, hearing representative, and witnesses Brett Seufferer; manager, Karla Hefferon, assistant vice president; Todd Willis, assistant warehouse manager/supervisor; and Dustin Warren, department manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Samuel Anderson was employed by Hy-Vee, Inc. from November 20, 2009, until May 20, 2010, when he was discharged for excessive absenteeism after being warned. Mr. Anderson worked as a part-time order selector and was paid by the hour. His immediate supervisor was Dustin Warren.

Mr. Anderson was discharged from Hy-Vee, Inc. after he exceeded the permissible number of attendance infractions allowed under company policy. Under company policy, employees are subject to being discharged if they accumulate 12 attendance infraction points within a one-year period. Infraction points are not assessed against employees who are gone for pre-planned authorized absences or for personal illnesses that are properly reported. At the time of the claimant's discharge, he had accumulated 15 unplanned absences and 23 excused absences during the most recent 31 weeks of his employment. Mr. Anderson had received a verbal warning on November 22, 2009, for attendance; a written warning on December 21, 2009, for attendance; and had been suspended for three days on January 22, 2010, for excessive absenteeism. The claimant was warned at that time that additional absences that exceeded the permissible level could result in his termination from employment.

The claimant's final attendance infractions that caused his discharge took place on May 15 and May 16, 2010. On May 15, the claimant requested permission from an acting supervisor, Mr. Willis, to leave work at approximately 8:15 a.m. that day to accompany his girlfriend to visit her mother, who had been hospitalized with an aneurism in another city. Although Mr. Willis indicated to the claimant that the additional absence could cost Mr. Anderson his job, the claimant nevertheless left work early that day and was absent the following day.

Approximately two weeks earlier, Mr. Anderson had spoken with Mr. Willis about the possibility of being absent in the future due to his girlfriend's mother's hospitalization. Mr. Anderson had specified no days or times that he might be absent. The claimant had declined to leave work on that day two weeks earlier after Mr. Willis had explained to him at that time that the absences would not be excused and could result in his termination from employment.

At the time of discharge, Mr. Anderson did not dispute the number of attendance infraction points that had been accumulated or his reason for termination.

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

The question is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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(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.

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 evidence in the record establishes that Mr. Anderson had been repeatedly warned about his attendance infractions and was aware that his employment was in jeopardy because of excessive unexcused absences. Approximately two weeks before the final incident, the claimant had gone to Mr. Willis to indicate a desire to leave work that day to visit his girlfriend's mother, who was hospitalized. At that time, it was explained to the claimant that absences for these reasons would not be excused and could result in his loss of employment. After considering the matter at that time, Mr. Anderson declined to leave work that day. The claimant, however, indicated that in the future it might be necessary to take time away from work because of the hospitalization of his girlfriend's mother.

Mr. Anderson elected to leave work for an unplanned absence on the morning of May 15, 2010, to visit his girlfriend's mother in another city. It appears that the claimant's girlfriend was going to use the vehicle that they shared and thus the claimant would not have transportation home that day and this also may have been a factor in the claimant's decision to leave work for an unplanned absence that day. Because the girlfriend's mother was not part of the claimant's "family," the leaving that day was not categorized as a family emergency, which would have allowed the claimant to avoid attendance infraction points. Mr. Anderson elected to leave work early although he was aware that his employment was in jeopardy for excessive absenteeism.

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The evidence in the record establishes that the claimant was properly warned and that his most recent absences were not excused and that the claimant knew or should have known that leaving for these reasons could result in his termination from employment. Benefits are withheld.

**DECISION:**

The representative's decision dated July 6, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance 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.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

kjw/kjw