

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E RHEINGANS
Claimant

APPEAL NO. 12A-UI-02992-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
KELLY DANAHER
Employer

OC: 06/12/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

James E. Rheingans filed a timely appeal from an unemployment insurance decision dated March 21, 2012, reference 05, that disqualified him for benefits. After due notice was issued, a telephone hearing was held April 6, 2012 with Mr. Rheingans participating. Staff Consultant Jody Korleski participated for the employer, Express Services, Inc.

ISSUE:

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

FINDINGS OF FACT:

James E. Rheingans was employed by Express Services, Inc. from August 22, 2011 until he was discharged January 30, 2012. He last worked on assignment for Winnebago Industries. He was discharged for poor attendance. He was absent on January 29, 2012 because of strep throat. He notified both Winnebago and Express Services in accordance with their policies. He was prepared to return to work with medical verification of the reason for absence. Staffing Consultant Jody Korleski called Mr. Rheingans on the 30th to say that his services were no longer needed.

REASONING AND CONCLUSIONS OF LAW:

The propriety of the employer's decision to discharge Mr. Rheingans is not at issue in the hearing. The only issue for the administrative law judge is whether the discharge was for misconduct as that term is used for unemployment insurance purposes.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Excessive, unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Not all absence is treated equally for unemployment insurance purposes. Absence due to illness is not held against an individual for unemployment insurance purposes provided the individual properly reports the absence to the employer. See Higgins, and 871 IAC 24.32(7).

Before disqualification is appropriate, the evidence must establish that the final incident leading directly to the discharge was itself a current act of misconduct. See 871 IAC 24.32(8). The evidence establishes that the final incident was an absence due to illness properly reported to the employer. Since this was not an act of misconduct, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 21, 2012, reference 05, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs