

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIAH D HELMS

Claimant

APPEAL NO: 10A-UI-01507-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC

Employer

OC: 01/11/09

Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's January 19, 2010 decision (reference 02) that concluded the claimant was qualified to receive benefits and the employer's account could be charged because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on March 10, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Angie Tye, the human resource director, Amber Suckow and Pat Crawford appeared on the employer's behalf. During the hearing Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work as a full-time employee on October 14, 2009. The claimant received a copy of the employer's handbook that contained the attendance policy on October 14, 2009. (Employer Exhibit Four.) The employer considered an employee to have excessive absenteeism when an employee has two unexcused absences or tardiness in a 30-day period. Three no call/no show incidents in a 12-month period can result in an employee's discharge. (Employer Exhibit 4.)

On October 21, 2009, the employer gave the claimant a written memo about his attendance. As of October 21, the claimant had the following attendance issues: he notified the employer he was unable to work October 17 because of a family emergency; on October 18 the claimant did not work a scheduled make-up shift because he was unable to attend; on October 19 he did not report to work 6:00 a.m. to 8:30 a.m. and he did not notify the employer until after his shift that he would not be able to work that shift; on October 19, he did not attend a meeting from 10:00 a.m. to noon or notify the employer that he was unable to attend the meeting; and on October 19, he notified the employer he was unable to work a scheduled shift from 2:30 to 10:00 p.m. because of a family emergency. (Employer Exhibit Three.)

On November 3, the claimant overslept and did not attend a scheduled training. On November 4, the claimant did not report to a required 9:00 a.m. meeting. After the meeting the claimant's supervisor called the claimant and learned he forgot about the meeting. (Employer Exhibit Two.)

On November 11, the claimant notified his supervisor he was unable to attend a mandatory meeting because he ran out of gas. On November 12, 2009, the claimant did not call or report to two different scheduled trainings. The claimant later told the employer that while he had recorded the training sessions, he no longer had the paper with the times and dates of his training sessions. (Employer Exhibit One.)

The employer discharged the claimant on October 18, 2009. The employer discharged the claimant because he repeatedly failed to call or notify the employer when he was unable to work or attend scheduled meetings and/or training sessions.

The claimant reopened his claim for benefits the week of December 13, 2009. He has filed for and received benefits since December 13, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's repeated failure to notify the employer when he was unable to work or attend scheduled meetings and his repeated failure to work as scheduled or attend scheduled training sessions and meetings amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of November 15, 2009, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's January 19, 2010 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 15, 2009. This

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employers' account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs