

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**KELLY J WEIKUM  
1825 – 10<sup>TH</sup>  
NEVADA IA 50201**

**NEVADA TRUE VALUE HARDWARE INC  
123 LINCOLN HWY  
NEVADA IA 50201**

**Appeal Number: 05A-UI-04507-C  
OC: 03/27/05 R: 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kelly Weikum filed an appeal from a representative's decision dated April 22, 2005, reference 01, which denied benefits based on his separation from Nevada True Value Hardware, Inc. (True Value). After due notice was issued, a hearing was held on May 23, 2005 in Des Moines, Iowa. Mr. Weikum participated personally. The employer participated by Jim Axline, Owner, and Jerry Darrah, Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Weikum was employed by True Value from April 20, 2001 until March 21, 2005 as a part-time associate. He worked from 20 to 30 hours each week. He was discharged from the employment.

On February 4, 2005, Mr. Weikum was asked if he could replace another individual on Saturday, February 5. He indicated that he could and was to call the morning of February 5 to confirm whether he needed to work. Mr. Weikum did not report to work or contact the employer on February 5. He also failed to report for work or contact the employer on Monday, February 7, a regularly scheduled day. He did not have good cause for not contacting the employer on February 5 or February 7. Mr. Weikum was given a verbal warning at that time.

Mr. Weikum was scheduled to work March 20 and March 21. He did not report for work or contact the employer on either day. When he was in the store on March 19, he indicated that he was feeling better and planned to work on March 20. Another employer went to his home on the afternoon of March 20 but no one answered the door. The employer did not hear from Mr. Weikum until March 24 when he came in and apologized for his absences. Mr. Weikum did not have a home telephone in February and March. The nearest pay telephone is approximately one-half mile from his home. He usually got to work by walking or riding his bicycle.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Weikum was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Mr. Weikum had two unreported absences in February of 2005 and was verbally warned that such conduct was contrary to the employer's standards. In spite of the warning, Mr. Weikum was again absent from work on two consecutive shifts without calling in on March 20 and 21. He did not answer the door when the employer came to his house on March 20. Therefore, the administrative law judge concludes that he was not at home. If he was well enough to leave his home, he was well enough to get to a telephone to contact his employer to report his absences.

Mr. Weikum's unreported absences constituted a substantial disregard of the standards the employer had the right to expect. He had been verbally warned about such conduct but did not heed the warning. The administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 22, 2005, reference 01, is hereby affirmed. Mr. Weikum was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs