

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT PUESCHEL

Claimant

APPEAL NO: 10A-UI-13463-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLINS PLAZA/JOHN Q HAMMONS

HOTELS MANAGEMENT

Employer

OC: 08-29-10

Claimant: Appellant (2)

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 23, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 12, 2010. The claimant participated in the hearing. Jill Julius, Human Resources Manager and Mandy Kruse, Assistant Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance technician for Collins Plaza from August 28, 2007 to August 30, 2010. He was discharged for excessive absenteeism. The employer's attendance policy provides for termination if there are three incidents of no-call no-show within a 12-month period. The claimant was absent from August 16, 2010 through August 20, 2010, due to his son's illness but he properly reported his absences. He returned to work August 23, 2010, but was not feeling well towards the end of his shift. The claimant was absent due to his own illness from August 24, 2010 through August 27, 2010, and he reported those absences. He received a call from Darrell Moore August 30, 2010, telling him that he had missed too many days and not to report to work anymore. The claimant received a call from human resources on August 31, 2010, asking if he could report to a meeting on September 3, 2010. He said he would do so. The claimant reported to human resources on September 3, 2010 at 8:00 a.m. but the door was locked so he left. He called human resources and left a voice mail that he was there and to call him if they had any questions or concerns. He never received a call. The employer's records show the claimant was a no-call no-show August 18, August 27 and September 3, 2010, so he was discharged September 3, 2010. He had not received any written warnings for attendance within the last year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for excessive absenteeism August 30, 2010. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Id. No warnings had been issued to the claimant in the last year and all of his absences in August 2010 were due to his son's illness or his own illness. The claimant credibly testified they were all properly reported. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The September 23, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs