

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL I ESPITIA
Claimant

TEMP ASSOCIATES
Employer

APPEAL NO. 13A-UI-03459-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/20/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated March 20, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism on February 25, 2013, and benefits are denied. A hearing was held on April 24, 2013. The claimant participated. Darian Sloat, Branch Manager, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The employer is a temporary employment firm. The claimant worked some periodic temp assignments for about 18 months when he began work on an assignment as a full-time machine operator at Traffic Devices in Fairfield, Iowa from January 28, 2013 to February 25.

The employer called claimant with attendance policy issues on February 22. He left a voice mail message with a verbal warning that his job was in jeopardy due to absences and being late to work. Claimant had missed work due to enrolling in school on February 19 (welding program/Ottumwa CC), leaving early for orientation, transportation, and lateness.

The claimant called in absences due to weather for February 26, 27 & 28. The employer discharged claimant for excessive unexcused absenteeism on February 28.

REASONING AND CONCLUSIONS OF LAW:

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(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 administrative law judge concludes employer established misconduct in the discharge of the claimant on February 28, 2013, for excessive "unexcused" absenteeism.

Claimant admits he received a verbal warning from the employer his job was in jeopardy due to attendance issues on February 22. His absences for three consecutive days due to weather is a personal matter based on his inability to find adequate transportation to get to work during this period that is not excusable. Job disqualifying misconduct is established.

DECISION:

The decision of the representative dated March 20, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on February 28, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs