

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY L JOHN
Claimant

APPEAL NO. 11A-UI-05524-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 03/27/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Danny John filed an appeal from a representative's decision dated April 19, 2011, reference 01, which denied benefits based on his separation from Mercy Hospital. After due notice was issued, a hearing was held by telephone on June 1, 2011. Mr. John participated personally. The employer participated by Sheryl Knutson, Employee Relations Manager, and Kim Lopez, Nurse Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. John was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. John was employed by Mercy Hospital from June 11, 1990 until February 23, 2011. He was last employed full time as a unit clerk. He was discharged due to repeated tardiness. At all times material to this decision, his start time was 7:00 a.m. The employer allows a five-minute "grace period" after the start of the shift. Mr. John was counseled regarding his tardiness on October 19, 2009 and received a written warning because of tardiness on December 18, 2009.

Mr. John was suspended for three days on January 22, 2010 due to his tardiness. There were 14 occasions on which he clocked in after 7:05 a.m. from December 28, 2009 through January 22, 2010. Because of continuing issues with tardiness, he was again suspended on June 4, 2010. There had been an additional ten occasions of tardiness since the prior suspension. Mr. John was advised that any further tardiness during the next 90 days would result in his discharge. He was also told that his tardiness would be monitored after the 90-day period expired.

From November 29, 2010 through February 23, 2011, Mr. John clocked in after 7:05 a.m. on 24 occasions. He attributed his tardiness to difficulty he had sleeping as a result of marital

problems and a divorce. The final incident of tardiness was on February 23 and he was discharged the same day. Tardiness was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

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 benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. John had ample warning that his repeated tardiness was jeopardizing his continued employment with Mercy Hospital. In spite of the various warnings, he continued to report to work late. On the day of discharge, he had been late 24 times beginning November 29, 2010. This means he was late approximately eight times each month. Some of his tardiness was due to transportation issues. Absence from work due to matters of purely personal responsibility, such as transportation, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence of record does not establish any reasonable cause for the repeated tardiness. Lack of sleep due to marital issues does not constitute reasonable grounds for missing work.

The record of tardiness identified herein is sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. For the above reasons, benefits are denied.

DECISION:

The representative's decision dated April 19, 2011, reference 01, is hereby affirmed. Mr. John was discharged by Mercy Hospital for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css