

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUTZ PETER F SAMEL
Claimant

APPEAL NO. 11A-UI-01472-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

OC: 01/02/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lutz Samel filed an appeal from a representative's decision dated January 26, 2011, reference 01, which denied benefits based on his separation from CDS Global, Inc. (CDS). After due notice was issued, a hearing was held by telephone on March 10, 2011. Mr. Samel participated personally. The employer participated by Sharon Kroger, Human Resources; Sue Grummert, Senior Manager; and Kris Pope, Production Manager.

ISSUE:

At issue in this matter is whether Mr. Samel 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. Samel was employed by CDS from September 22, 2008 until December 16, 2010 as a full-time customer service representative. He was discharged because of his attendance. He received a written warning regarding his attendance on December 28, 2009.

Mr. Samel's next warning was on April 15, 2010. He was warned at that time that any unexcused absences after that date could result in further disciplinary action, up to and including discharge. He was absent due to illness on August 9 and November 24, 2010. He was then absent on December 6, 8, and 9 due to lack of transportation. He was suspended on December 9 and notified of his discharge on December 16, 2010. Attendance was the sole reason for Mr. Samel's discharge.

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.

Mr. Samel was on notice that his attendance was jeopardizing his continued employment with CDS. His discharge was prompted by the three absences of December 6, 8, and 9. Absences 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). Therefore, Mr. Samel's absences of December 6, 8, and 9 are all unexcused. The fact that the absences were properly reported does not alter the fact that they were not due to a cause the law recognizes as reasonable. Three consecutive unexcused absences after warning are sufficient to establish excessive unexcused absenteeism, which constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated January 26, 2011, reference 01, is hereby affirmed. Mr. Samel was discharged by CDS for disqualifying misconduct. 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