

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY E TURNER
Claimant

APPEAL NO. 08A-UI-06009-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLOCKBUSTER INC
Employer

OC: 05/18/08 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Blockbuster, filed an appeal from a decision dated June 20, 2008, reference 04. The decision allowed benefits to the claimant, Timothy Turner. After due notice was issued, a hearing was held by telephone conference call on July 16, 2008. The claimant participated on his own behalf. The employer participated by District Manager Mindy Martinez. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Timothy Turner was employed by Blockbuster from December 13, 2007 until May 3, 2008 as a part-time customer service representative. The employer discharged him for absenteeism, he was no-call/no-show to work April 26, May 2, and 3, 2008. However, the claimant had permission to be gone on all three of those days from Store Manager Eric. The first day, he was gone because the police had called him about a problem at his home, and then the manager had said the store was slow and he did not need to come back in. The second two days, he was gone with prior permission from the manager for surgery.

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(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.

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 employer has asserted the claimant was discharged for being no-call/no-show to work for three days. However, he was not. Mr. Turner was gone with the knowledge of and permission from the manager on each of those days. They are therefore excused absences and do not constitute misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of June 20, 2008, reference 04, is affirmed. Timothy Turner is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw