

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SETH D STOLLER
Claimant

APPEAL NO. 07A-UI-03540-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SSW ENTERPRISES INC
Employer

**OC: 12/24/06 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Collis, Inc. filed an appeal from a representative's decision dated March 29, 2007, reference 02, which held that no disqualification would be imposed regarding Seth Stoller's separation from employment. After due notice was issued, a hearing was held by telephone on April 23, 2007. The employer participated by Michele Anderson, Human Resources Coordinator. Mr. Stoller did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Stoller was employed by Collis, Inc. from January 19, 2005 until February 16, 2007 as a full-time laborer. He was discharged because of his attendance. Mr. Stoller called on February 15 to report that he would be absent due to illness. However, he did not give the required 30-minute's notice. He was notified of his discharge on February 16.

Mr. Stoller was absent for personal reasons on February 24, 2006. He called after the start of his shift to report an absence on March 27, 2006. He was a "no call/no show" on June 24, 2006. He was given a written warning on June 20, 2006. Mr. Stoller was over two hours late due to oversleeping on July 21, 2006. He received a written warning and three-day suspension on August 1, 2006. He was almost two hours late due to oversleeping on October 18, 2006. He received another written warning and three-day suspension on October 20, 2006. Mr. Stoller was absent for personal reasons on December 12, 2006.

Mr. Stoller was aware of the employer's attendance policy. He was also provided information concerning his point status whenever he was disciplined regarding attendance. Attendance was the sole reason for his 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 receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Mr. Stoller's absences of February 24 and December 12 are unexcused as they were for personal business. Absences caused by personal matters are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). His absences of March 27 and June 24 are unexcused because they were not properly reported. Mr. Stoller failed to call within 30 minutes before the start of his shift on both occasions. The tardiness of July 21 and October 18 is unexcused as it was due to oversleeping, which is not reasonable grounds for missing work.

Mr. Stoller had six occasions of unexcused absenteeism during the year preceding February 15, 2007. In spite of the warnings he received, he did not take steps to conform his attendance to the employer's standards. The decision to discharge was prompted by the unexcused absence of February 15, 2007. Although Mr. Stoller may have had a good reason for being absent, he failed to give timely notice of the intent to be absent. The administrative law judge considers seven occasions of unexcused absenteeism during one year to be excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards the employer had the right to expect and is, therefore, misconduct within the meaning of the law.

For the reasons cited herein, Mr. Stoller is disqualified from receiving job insurance benefits. No overpayment results from this reversal of the prior allowance as he has not claimed benefits since filing his additional claim effective March 11, 2007.

DECISION:

The representative's decision dated March 29, 2007, reference 02, is hereby reversed. Mr. Stoller was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs