

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLO GALLEGOS
Claimant

APPEAL NO. 10A-UI-14450-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN
Employer

OC: 11/15/09
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 18, 2010 determination (reference 05) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Tom Kuiper represented the employer. Gayle Kingery and James Gibson appeared as witnesses for the employer. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working as a full-time employee for the employer in April 2009. The employer assesses attendance points when an employee does not work as scheduled. If an employee notifies the employer he is unable to work, he receives one point. If an employee does not personally contact his supervisor, he receives two points. The employer starts the attendance points on January 1 of each year. If an employee accumulates eight points or more points in a year, he will be discharged for excessive absenteeism or for violating the employer's attendance policy. The claimant received a copy of the attendance policy. (Employer Exhibit One.)

In 2010, the claimant received the following attendance points:

June 21	called in to report absence	1 point
August 20	claimant did not call in, but his wife told her supervisor the claimant was unable not work scheduled	2 points
August 30	claimant did not call in, but his wife told her supervisor the claimant was unable to work as scheduled	2 points
September 8	claimant did not call in, but his wife told her supervisor the claimant was unable to work as scheduled	2 points

On September 9, the claimant received three written warnings for each of his absences on August 20, and 30, and September 8. The claimant then knew the employer assessed two points for each of these absences because he had not called his supervisor to inform him that the claimant would not be at work. As of September 9, the claimant knew he had accumulated seven attendance points. (Employer Exhibit B.)

On September 23, the claimant's water heater was not working and he decided to stay home to fix it. The claimant again did not personally call the employer; instead he relied on his wife to again let the employer know he would not be at work this day. Since the claimant did not call to report he was unable to work, the employer considered him a no-call, no-report and assessed him two attendance points. The employer discharged the claimant on September 24 because he accumulated nine attendance points and violated the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy when he received three written warnings on September 9, 2010. As of September 9, the claimant knew the employer would assess him two instead of one attendance point if he did not personally notify his supervisor when he was unable to work as scheduled. The employer did not accept the claimant's wife informing her supervisor that the claimant would not be at work. Since the claimant knew his job was in jeopardy for attendance issues, his failure to properly notify the employer that he was unable to work on September 23 amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect. The employer ultimately discharged the claimant for reasons constituting work-connected misconduct. As of September 26, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 18, 2010 determination (reference 05) is affirmed. The employer discharged the claimant for excessive, unexcused absenteeism which constitutes work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 26, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw