

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG C GRIMM
Claimant

APPEAL NO. 08A-UI-05480-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OAK LANE
Employer

OC: 05/11/08 R: 02
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Craig Grimm filed an appeal from a representative's decision dated June 4, 2008, reference 01, which denied benefits based on his separation from Oak Lane. After due notice was issued, a hearing was held by telephone on June 25, 2008. Mr. Grimm participated personally. The employer participated by Jeff Oliphant, Manager, and Phil Oliphant, Supervisor. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Grimm was employed by Oak Lane from January 1, 2007 until May 12, 2008 as a full-time herdsman. He was discharged because of his attendance.

The employer expects absences to be reported before the start of the work shift. Mr. Grimm was at all times material to this decision scheduled to be at work at 6:00 a.m. He received a written warning on July 19, 2007 because he did not report his absence of July 18 until 2:06 p.m. He received another written warning after he waited until 10:00 a.m. to report his absence of August 15. Mr. Grimm was given a written warning and placed on probation after he refused to provide a doctor's statement to support his absences of February 18 and 19. He was advised that the probation was for an indefinite period of time and that he could be discharged depending on the severity of the next incident.

The decision to discharge Mr. Grimm was prompted by his absence of May 12, 2008. His last day at work was May 7. He was given Thursday and Friday, May 8 and 9, off to attend a wedding in Colorado. Jeff Oliphant worked in his place so that he could also have that Saturday and Sunday, May 10 and 11, off as well. At approximately 5:00 a.m. on May 12, Mr. Grimm left a message for the employer indicating he would not be at work that day because he was

running behind by five or six hours. His departure from Colorado was not delayed by any emergency or unforeseen problems. Mr. Grimm was notified of his discharge by telephone the same day. Attendance 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 receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Mr. Grimm had unexcused absences on July 18 and August 15, 2007 when he failed to give the employer timely notice that he would be absent. On one occasion, he did not call until four hours after his shift started. On the other occasion, he did not call until the end of his shift. Mr. Grimm was notified on both occasions that his attendance was unacceptable. He received a warning about his attendance on February 20, 2008. It appears that the absences of February 18 and 19 were both due to illness and were timely reported. Although the absences for which he was warned may have been excused, the warning served to put Mr. Grimm on notice that his attendance was jeopardizing his continued employment with Oak Lane. The warning notified him that he was on probation for an indefinite period of time and could be discharged if there were further attendance issues.

In spite of being on probation because of his attendance, Mr. Grimm accumulated an unexcused absence on May 12. Absences caused by matters of purely personal responsibility are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Grimm was absent on May 12 because he delayed leaving Colorado. He knew what time he was expected at work and knew how long the trip was from Colorado to his home. He did not cite any emergency or other unforeseen circumstance that prevented him from leaving Colorado in sufficient time to report to work on time. Whether he could report to work on time on May 12 was within his control.

The administrative law judge concludes that Mr. Grimm's two unreported absences and his absence of May 12 while on probation are sufficient to establish a substantial disregard for the employer's standards. For the reasons cited herein, it is concluded the disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 4, 2008, reference 01, is hereby affirmed. Mr. Grimm 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

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