

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN A UNSELD
Claimant

APPEAL NO. 10A-UI-02796-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/03/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 11, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 5, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Melissa Patton. Tim Speir participated in the hearing on behalf of the employer with witnesses, Loren Friedrichsen, Mandy Hirschman, Steve Ruden, and Terry Graybill. Exhibits One, Two, and A were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a warehouse worker from August 3, 2009, to December 13, 2009. He was informed and understood that under the employer's work rules, employees were required to notify the employer or their supervisor if they were not able to work as scheduled and were required to call daily unless their supervisor advised otherwise. Under the employer's attendance policy, employees receive points for unscheduled absenteeism and are subject to termination after receiving 12 attendance points.

The claimant was absent from work and received points for his absences on December 4, 5, and 6. He had informed the assistant human resources manager that he needed to get some criminal matters resolved. The manager told him he had until December 7 to get the matters settled. The claimant called in on December 7 and stated that he would not be at work and he received four points for the days he was absent.

The claimant became sick and went to the doctor on December 9. The doctor excused the claimant from working on December 10. He called in sick on December 10 and received an additional point.

The claimant reported to work on December 11 and 12. On December 13, the claimant called in and stated that he was going to be late for work. He received one-half point for reporting late for work.

The claimant was next scheduled to work to work on December 17. He was sick and unable to work, so he called that day and spoke with his supervisor. He told his supervisor that he had an appointment with his doctor scheduled on December 18. The supervisor told him that he should return to work when his doctor released him and bring in his doctor's slip. The supervisor did not tell the claimant that he did not need to call in on the days he was absent.

The claimant went to the doctor on December 18. The doctor stated the claimant was seen on December 9 and 18 and was excused from working from December 9 through 23. He was released to return to work on December 24.

The claimant was absent from scheduled work on December 18, 19, and 20. He did not call the employer to notify the employer that he would not be at work. He believed he did not have to call in because the supervisor told him to return to work when his doctor released him. The claimant was considered absent without notice on December 18, 19, and 20 for which he received five points for each absence, which put him over the point total for termination.

The claimant called in on his next scheduled days of work on December 24 and 26 due to winter weather and road conditions. He reported to work as scheduled on December 27 but was sent home and told that he was suspended. On December 28, the claimant called the assistant human resources manager and was informed that he was discharged due to having exceeded the point limit for termination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides 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 claimant was discharged for excessive absenteeism in violation of the employer's attendance policy. While I am convinced the claimant was legitimately ill on the days he called in absent and on December 18, 19, and 20, he failed to follow the employer's work rules regarding these three days of absence. I believe the claimant's testimony that he did not think he had to call in based on his conversation with his supervisor. The problem is that I do not think his belief was reasonable. The supervisor did not say anything excusing the claimant from

calling in. And since the claimant was not taken off the schedule, the employer needed to know if he was going to work or be absent on these days. Since the claimant did not properly report his absences, he was discharged for misconduct.

DECISION:

The unemployment insurance decision dated February 11, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs