

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ABIMAEEL REYES**

Claimant

**IOWA BEVERAGE SYSTEMS INC**

Employer

**APPEAL NO. 14A-UI-02545-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/02/14**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(1) – Misconduct Definition  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated February 26, 2014, reference 01, that held the claimant was not discharged for misconduct on February 7, 2014 and benefits are denied. A hearing was held on March 31, 2014. The claimant participated. Trevor Gosselink, Controller, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on February 12, 2007 and last worked as a full-time salesman on February 6, 2014. An employer supervisor instructed claimant to get together with another salesman to familiarize his route for February 7.

Claimant had some work schedule flexibility that meant he did not have to report to an office location before starting the day and he was free to meet with other salesman and/or call on customers.

Claimant did not get with the salesman and the employer tried to reach him with phone calls and messages. About six hours after the employer expected claimant to work with the salesman, claimant contacted a supervisor. He explained that he could not get with the salesman so he called on some customers.

The employer did no check-up on claimant to see if he had performed work on February 7. The employer discharged claimant for failing to follow a work instruction and an unauthorized absence from work. Claimant had received no prior discipline.

**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(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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on February 7, 2014, for excessive "unexcused" absenteeism and filing to follow a work instruction.

Although the employer offered documents about what it believes was the work communication to claimant about meeting with the salesman on February 7, it did not offer the supervisor as a witness. Claimant does not dispute the general instruction, but states he was unable to get together with the salesman.

While the employer characterizes the seriousness of the incident as a six-hour unauthorized absence, claimant responds he did perform some work with customers. Since claimant had not been disciplined before for this type of work absence, this single incident does not constitute job disqualifying misconduct.

**DECISION:**

The decision of the representative dated February 26, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on February 7, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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