

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN M FOSTER
Claimant

APPEAL NO. 11A-UI-02310-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALADDIN FOOD MANAGEMENT SERVICES
Employer

OC: 12/19/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, John Foster, filed an appeal from a representative's decision dated February 15, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held in Ottumwa, Iowa, on March 28, 2011. The claimant participated on his own behalf. Aladdin Food Management Services (Aladdin) participated by Food Service Director Ken Zimmerman. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

John Foster was employed by Aladdin from July 1, 2008, until December 17, 2010, as a full-time utility worker. He had received a copy of the employee handbook at the date of hire. The handbook states that three written warnings for the same policy violation will result in discharge. Mr. Foster received a written warning December 6, 2009, when he left on his lunch break and was no-call, no-show to work at the end of his break. On August 18, 2010, he was no-call, no-show to work because he did not know he was on the schedule.

On December 13, 2010, Mr. Foster left for his lunch break and was again no-call, no-show to work at the end of his break. He had ridden his bicycle three or four miles to the home of a friend in order to borrow money for "pop and cigarettes." The friend did not have the money and the claimant became upset. He stated his bicycle broke and instead of walking back to work he walked home, which was a greater distance than it would have been to walk back to work. He attempted to call his supervisor from his friend's home but could not get the phone to dial the extension. As a result, he did not speak with anyone or leave a message. He returned to work on December 17, at which time Food Service Director Ken Zimmerman discharged him for absenteeism.

The claimant maintained that he has a "mental health diagnosis" which prevented him from returning to work. The document submitted from James Brooks, M.D., was written two months

after the claimant was discharged and only states that there would be days he would miss and that the claimant should be excused from work on those days. No one at Aladdin was aware of the claimant's "mental health diagnosis," as no documentation had ever been submitted, no requests for medical leave of absence submitted, and no request for accommodations from a medical professional were ever provided.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

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 claimant had been advised his job was in jeopardy as a result of his unexcused absenteeism. The final incident was when he left during his lunch break to go borrow money for "pop and cigarettes" and was unable to return when his bicycle broke down. Matters of purely personal consideration, such as lack of transportation, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant could not explain why he could not have borrowed the money from his friend before work or after work or why it was an emergency

that he be able to purchase pop and cigarettes. He admitted that it was a longer distance for him to walk home than it would have been for him to walk back to work when he found his bicycle was not operational. He did not offer an explanation as to why he did not simply return to work. The administrative law judge considers this final absence to be unexcused and, with the other unexcused absence, this constitutes excessive unexcused absenteeism. Under the provisions of the above administrative code section, this is misconduct for which he is disqualified.

The documents submitted by Dr. Brooks regarding the claimant's "mental health diagnosis" cannot be given any weight. The form is vague and very general and simply says the claimant should be excused from work "on those days" without specifying which days of absence were due to the mental health condition and which days were due to other matters, such as the lack of transportation.

DECISION:

The representative's decision dated February 15, 2011, reference 01, is affirmed. John Foster is disqualified and benefits are withheld until he has requalified by earning ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw