

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R BROCKUS
Claimant

APPEAL NO. 10A-UI-14230-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CMAX LLC
MCDONALD'S**
Employer

**OC: 08/14/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, James Brockus, filed an appeal from a decision dated October 11, 2010, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 30, 2010. The claimant participated on his own behalf. The employer, McDonald's, participated by Store Manager Teresa Benson.

ISSUE:

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

FINDINGS OF FACT:

James Brockus was employed by McDonald's from July 30, 2009 until August 17, 2010 as a part-time crew member. He had received a final warning for attendance on August 6, 2010. The warning emphasized he was expected to be at work at the time his shift was scheduled to start and if he was unable to come to work he must notify the employer at least two hours before the start of the shift. The warning further notified him his job was in jeopardy.

On August 17, 2010, Mr. Brockus was scheduled to begin work at noon. At 11:25 a.m. his wife called Swing Manager Courtney Gerr and said the claimant would be absent. She was told he must call himself. A short time later the claimant called and spoke with Ms. Gerr, stating he was ill. She reminded him of the company policy which required a doctor's excuse and he said he would get one.

Around 2:00 p.m. the claimant came into the store and told Ms. Gerr he did not have a doctor's excuse because he had been to the doctor's office and did not have the \$20.00 co-pay required. The swing manager told him he must have a doctor's excuse by 5:00 p.m. or he would be fired. Mr. Brockus maintained he had contacted family and friends and no one had any money to help him pay for the doctor, but later his brother gave the claimant's wife money to go buy a 12-pack

of beer for him, and the claimant drove her to the store to buy it. This was seen by Ms. Gerr and reported to Store Manager Teresa Benson.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 attendance and failure to follow company policy regarding doctor's excuses and reporting the absence at least two hours before the start of the shift. The final occurrence was another improperly reported and inadequately excused absence. The claimant may have been ill but he failed to properly report the illness and did not obtain the doctor's excuse.

The claimant did not explain why he did not have the doctor's office bill him for the co-pay if he did not have the money at the time of the appointment, or why he was purchasing beer for his brother later the same day.

The record establishes the claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of October 11, 2010, reference 02, is affirmed. James Brockus is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs