

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L ROSS
Claimant

APPEAL NO. 07A-UI-05045-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTRONIC DATA SYSTEMS CORP
Employer

OC: 04/08/07 R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Electronic Data Systems Corporation (EDS) filed an appeal from a representative's decision dated May 7, 2007, reference 01, which held that no disqualification would be imposed regarding Matthew Ross' separation from employment. After due notice was issued, a hearing was held by telephone on June 4, 2007. Mr. Ross participated personally. The employer participated by Al Engle, Supervisor, and John Thacker, Operations Manager. The employer was represented by Malia Maples of TALX Corporation.

ISSUE:

At issue in this matter is whether Mr. Ross 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. Ross began working for EDS on October 2, 2006 as a full-time customer service representative. He was discharged because of his attendance. His last day of work was January 16, 2007. He was absent without calling in on January 17, 19, and 20. He was not scheduled for work on January 18.

Mr. Ross called on January 22 and requested two days off. He indicated that he needed time to get "back on his feet" following a recent move. He did not cite illness of a family member as the reason he wanted the time off. He was told he had to come in the following day or he would be discharged. He did not report as directed and, therefore, was separated from the employment. Mr. Ross had received verbal warnings concerning his attendance.

Mr. Ross filed a claim for job insurance benefits effective April 8, 2007. He has received a total of \$621.00 in benefits since filing his claim.

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. Ross was absent without notice for three consecutive shifts, January 17, 19, and 20. The evidence of record does not establish any good reason for his failure to contact the employer on any of the three dates. Therefore, all three absences are unexcused.

Mr. Ross had the opportunity to retain his employment with EDS by reporting to work on January 23 as directed by Mr. Engle on January 22. In spite of knowing that he would lose his job if he did not report for work, Mr. Ross did not come in. He contended during the hearing that the January absences were caused by his son's hospitalization. However, he told the employer on January 22 that he needed time off because he had recently moved. Furthermore, Mr. Ross' testimony was somewhat vague as to whether his son was actually in the hospital during the period beginning January 17. The administrative law judge concludes that the absence on January 22 was not due to his son's illness. Because the absence was due to personal reasons, his recent relocation, it is unexcused. 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. Ross had been warned that his attendance was jeopardizing his continued employment with EDS. He had four unexcused absences (January 17, 19, 20, and 22) during a period of one week. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, it is concluded that misconduct has been established and benefits are denied. Mr. Ross has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 7, 2007, reference 01, is hereby reversed. Mr. Ross 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. Mr. Ross has been overpaid \$621.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css