

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN J FREESE
Claimant

APPEAL NO: 10A-UI-03074-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/17/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 18, 2010 reference 01, that held she was discharged for misconduct on June 19, 2009, and benefits are denied. A telephone hearing was held on April 12, 2010. The claimant participated. Brock Sands, Operations Manager, and Daniel Speir, Representative, participated for the employer. Employer Exhibits 1-5 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began work on May 14, 2007, and last worked for the employer as a part-time night stocker on June 6, 2010. The claimant has a high school degree. The claimant received an employee handbook that contained the employer policies regarding attendance and discipline. The claimant received a written warning for an unexcused absence from work on April 24, 2009. The claimant received a written warning for being late to work on May 29 and June 5. The claimant offered no explanation for being late and refused to sign the warning. The employer placed the claimant on suspension for one-week, June 8 to June 14, and scheduled her to return on June 19. The claimant's supervisor called and left a reminder message for the claimant to report on June 19. The claimant was a no-call, no-show to work on the 19th and she was terminated.

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 the employer has established that the claimant was discharged for misconduct in connection with employment effective June 19, 2010.

The employer offered more credible testimony with supporting documentation than claimant to establish the pattern of written discipline for attendance issues and the most recent absence from work. The claimant has a high school education but she frequently stated she did not understand questions about simple issues and had great difficulty in re-calling dates. The employer offered specific discipline dates, established that claimant missed work or was late to work for inexcusable reasons, and she failed to report back to work on June 19 from a suspension.

DECISION:

The department decision dated February 18, 2010 reference 01, is affirmed. The claimant was discharged for misconduct on June 19, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs