

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY L MCGREAN
Claimant

APPEAL NO. 07A-UI-03135-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT & DYBDAHL INC
Employer

**OC: 02/18/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gary McGrean filed an appeal from a representative's decision dated March 16, 2007, reference 01, which denied benefits based on his separation from Roberts & Dybdahl, Inc. After due notice was issued, a hearing was held by telephone on April 12, 2007. Mr. McGrean participated personally. The employer participated by Scott Messamaker, Operations Manager. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. McGrean 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. McGrean began working for Roberts & Dybdahl, Inc. on November 14, 2005. He was employed full time as a laborer. He underwent surgery on his arm on February 2 and was released to return to work on February 6. Mr. McGrean worked a few hours that day and then complained that his arm hurt. He told his lead person and foreman that he was leaving and was advised to notify Scott Messamaker.

During the conversation with Mr. Messamaker, Mr. McGrean was told to use his vacation time wisely, as he only had three days remaining. Mr. Messamaker made the comment because Mr. McGrean would have to use vacation time to cover the time he missed due to leaving early on February 6. He did not have any sick leave remaining. There was no discussion concerning Mr. McGrean's intent to use vacation time for the remainder of the week. He did not report for work or contact the employer on February 7, 8, or 9. When he returned to work on February 12, he was notified of his separation from the company. When asked why he had not called in to report his absences, Mr. McGrean indicated that he did not have to call in daily when he was hospitalized in October of 2006. He had not been required to call in daily in October because the employer was aware of his whereabouts and the circumstances of his absences.

Mr. McGrean had received written warnings about his attendance on April 28 and July 2, 2006. He had always properly reported his absences before February 7, 2007. Attendance was the sole reason for the separation.

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). Mr. McGrean was discharged because of his attendance. He was absent for three days without notice to the employer. He did not give advance notice on February 6 that he would be absent for the remainder of the week. There was no agreement that he would be allowed to use vacation time to cover the remaining days of the week.

When Mr. McGrean left work on February 6, the employer had no way of knowing whether he would return the following day or some other day. It was his responsibility to either call in each day he was absent or to make arrangements in advance to have the time off. Mr. McGrean did neither. He had received warnings in the past regarding his attendance. He knew or should have known that he had to notify the employer when he was not going to be at work. Because the absences beginning February 7 were not properly reported, all three are unexcused absences.

The administrative law judge considers three consecutive unexcused absences to be sufficient to establish excessive unexcused absenteeism, especially in light of the fact that Mr. McGrean had been warned about his attendance. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 16, 2007, reference 01, is hereby affirmed as to result. Mr. McGrean 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw