

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN M JEWEL
Claimant

APPEAL NO. 10A-UI-02870-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

**OC: 01/24/10
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 16, 2010, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on April 5, 2010. Claimant Ryan Jewel participated. K.D. Kalber, Director of Human Resources, represented the employer and presented additional testimony through Brian Nielsen, Dietary Supervisor. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-02869-JTT. Exhibits One through Twelve were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ryan Jewel was employed by Good Samaritan Society, Inc., as a part-time dietary server from September 2008 until January 21, 2010, when the employer discharged him for attendance.

The final absence that prompted the discharge occurred on January 20, 2010, when Mr. Jewel was absent from work due to weather-related transportation issues. Mr. Jewel was scheduled to work from 4:30 to 7:30 p.m. Mr. Jewel lived seven or eight miles from the workplace. Mr. Jewel had pulled out of his driveway and his car got stuck on ice in the alley. Mr. Jewel contacted the workplace at 4:00 p.m. and spoke to Mr. Nielsen. Mr. Jewel told Mr. Nielsen that his car had just gotten stuck, that he might not make it to work, and that he would be late if he did make it to work. Mr. Jewel then tried to secure an alternative means to get to work and continued to attempt to move his car to a place where he could drive it. Mr. Nielsen called Mr. Jewel at 5:00 p.m. and Mr. Jewel said he would appear for his shift once he secured a ride. Mr. Jewel was not able to secure a ride until 6:45 p.m. At that point, Mr. Jewel decided that it was too late to go to work. Mr. Jewel telephoned the workplace at 7:00 p.m., got voicemail, but did not leave a message.

The employer's attendance policy required that Mr. Jewel notify the employer at least two hours prior to the scheduled start of his shift if he needed to be absent. Mr. Jewel was aware of the policy.

Mr. Jewel's next more recent absence had been on June 14, 2009, when Mr. Jewel was absent due to illness and properly reported the absence to the employer. Mr. Jewel was also absent due to illness properly reported on April 14, 15, and May 11, 2009. Mr. Jewel had been absent due to transportation issues on March 25, 2009. Mr. Jewel had left work early on February 27, after his brother was hospitalized in connection with a severe asthma attack. On January 24, 2009, Mr. Jewel was absent due to illness properly reported. On January 1, 2009, Mr. Jewel left work early due to illness properly reported. Mr. Jewel was absent on January 2, 2009, due to illness properly reported.

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.

The employer has the burden of proof in a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The weight of the evidence indicates that the absence on January 20 ultimately was an unexcused absence. The absence was initially attributable to the weather. However, once Mr. Jewel secured a ride, he made a conscious decision not to appear for the remainder of his shift. One has to go all the way back to March 25, 2009 to find the next most recent unexcused absence. Those absences that occurred in April through June 2009 were for illness properly reported and were excused absences under the applicable law. With a ten-month gap between the two final unexcused absences, the evidence fails to establish excessive unexcused absences.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Jewel was discharged for no disqualifying reason. Accordingly, Mr. Jewel is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Jewel.

DECISION:

The Agency representative's February 16, 2010, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css