

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L SIGLER
Claimant

APPEAL NO. 11A-UI-05323-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMRI INC
Employer

OC: 03/27/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Sigler filed an appeal from a representative's decision dated April 19, 2011, reference 01, which denied benefits based on his separation from GMRI, Inc. After due notice was issued, a hearing was held by telephone on May 17, 2011. The employer participated by Marty Johnson, General Manager. Exhibits One through Seven were admitted on the employer's behalf. Mr. Sigler did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Sigler was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Sigler began working for GMRI, Inc., doing business as Red Lobster restaurant, on October 22, 2009. He was employed full time as a server. He was discharged because of his attendance.

The employer requires that absences be reported two hours before the start of the work shift. Mr. Sigler was provided a copy of the policy at the time of hire. On March 21, 2010, he failed to report for his 11:00 a.m. shift. The employer left a message for him at 11:20, but he still had not responded to the message an hour later. He later told the employer that he believed another employee was going to work for him on that date. When employees swap shifts, they must have management approval and the change is noted on the work schedule. Mr. Sigler received a written warning regarding the March 21 absence. He was again scheduled to be at work at 11:00 a.m. on May 2. There was no answer when the employer called him at 11:20. He called at 11:25 and stated he thought someone else had picked up his shift. Management had not approved a trade of the shift. As a result of the absence, he received a written warning on May 3.

Mr. Sigler was 45 minutes late on September 19 because he misread his schedule. He received another written warning on September 19. He was scheduled to be at work at 11:30 a.m. on February 9, 2011. When he did not report as scheduled, the employer called him and he said he had written his schedule down incorrectly. He was at the doctor's office with his son and did not arrive at work until after 2:00 p.m. He received a final written warning on February 11, 2011.

The decision to discharge was triggered by the absence of March 22. Mr. Sigler was scheduled to be at work at 4:00 p.m. The employer called him at 4:30 and he indicated he was sick. He had come home after school and fallen asleep. He was discharged at that point. 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). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. Sigler accumulated five periods of unexcused absenteeism during the last 12 months of his employment. The absences are unexcused because they were not properly reported to the employer. The absences were due to him misreading his schedule and failing to make sure he had management approval to trade shifts. It was his responsibility to make sure he wrote his schedule down correctly. It was also his responsibility to make sure a manager approved when he wanted to trade shifts with a coworker. Although he was warned on March 21 about swapping shifts without approval, he was again absent on May 2 without having a manager approve of him trading his shift. He received a warning on September 9 after he was late due to misreading his schedule. This warning should have put him on notice that he needed to pay closer attention to the schedule. In spite of the warning, he again wrote his schedule down incorrectly with respect to his absence of February 9.

Mr. Sigler was clearly on notice that his attendance was jeopardizing his continued employment. Although he may have been sick on March 22, the evidence failed to establish any justification for failing to give the employer notice of his intended absence. The five periods of unexcused absenteeism identified herein are sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. It is concluded, therefore, that disqualifying misconduct has been established. As such, benefits are denied.

DECISION:

The representative's decision dated April 19, 2011, reference 01, is hereby affirmed. Mr. Sigler was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw