

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GEMINI V ELLIS**

Claimant

**APPEAL NO. 11A-UI-09425-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES**

Employer

**OC: 06/19/11**

**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated July 13, 2011, reference 01, that held the claimant was not discharged for excessive unexcused absenteeism on June 23, 2011, and benefits are allowed. A hearing was held on August 8, 2011. The claimant participated. Becky Snyder, On-site Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time production worker on assignment at Winegard from March 14, 2011 to June 17. The claimant received the employer attendance policy that requires an employee to call-in and report absences from work.

The claimant issued claimant eight written warnings from April 1, 2011 to June 10 for failings to call-in and notify the employer he would be absent from work. He was a no-call/no-show to work on eight occasions that he received the warnings. The warnings state he may be terminated.

The claimant was a no-call/no-show to work on June 22. He was scheduled to report at 6:00 a.m. on that date, but he failed to call in until 3:19 p.m. that was after his shift had ended. He offered no reason for failing to timely report his absence. Claimant was discharged on June 22, 2011 for violation of the company call-in policy to report absences from work.

Claimant was not available when called for the hearing. Claimant did not place a call in to Appeals until after the record was closed that is the reason the record was not re-opened. Claimant has received benefits on his claim.

## **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 discharged claimant for misconduct on June 22, 2011, for violation of the employer reporting absence policy.

The employer issued claimant eight written warnings for eight policy violations for failing to properly report absences from work. The no-call/no-show to work on June 22 constitutes job disqualifying misconduct in light of the prior warnings.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has received benefits on his unemployment claim, the overpayment issue is remanded to Claims for an overpayment decision.

**DECISION:**

The decision of the representative dated July 13, 2011, reference 01, is reversed. The claimant was discharged for misconduct in connection with employment on June 22, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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