

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEIL J KIMMER
Claimant

APPEAL NO. 10A-UI-09768-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADM GROWMARK RIVER SYSTEMS INC
Employer

OC: 06/06/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Neil Kimmer filed a timely appeal from a representative's decision dated June 29, 2010, reference 01, that denied benefits based upon his separation from ADM Growmark River Systems Inc. After due notice, a telephone hearing was held on August 24, 2010. The claimant did participate. The employer participated by Mr. Don Brunsing, Regional Manager and Mark Wessling, Superintendent.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Neil Kimmer was employed by ADM Growmark River Systems Inc. from August 2008 until June 3, 2010 when he was discharged for exceeding the maximum number of attendance infractions allowed under company policy. Mr. Kimmer worked as a full-time laborer in the company's grain division and was paid by the hour. His immediate supervisor was Mark Wessling.

The claimant was discharged after he exceeded the permissible number of attendance points when he failed to report for work on June 7, 2010 and did not provide the proper advance notification to the employer as required by company policy. Mr. Kimmer was aware of company policy and was aware that his employment was in jeopardy due to excessive absenteeism. The claimant had received a final warning from the company on June 4, 2010 about his attendance.

On June 7, 2010 the claimant was to begin work at 7:15 a.m. The claimant called at 7:10 a.m. to report that he had "lost his keys." Employees are expected to provide at least one-half hour notice before the beginning of a work shift to report any impending absences. Although the claimant lives approximately two and one-half miles from the employer's facility, Mr. Kimmer did not report to work for the entire day. The claimant did not secure alternative transportation to work although his employment was in jeopardy.

It is the claimant's position that the employer should have accommodated some of his previous absences when the claimant had taken vacation time for medical reasons as the claimant believes his time was used for the preparation for military duty. The claimant did not bring these issues to the attention of his employer prior to or at the time of his discharge from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the claimant was discharged under disqualifying conditions.

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.

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 evidence in the record establishes that the claimant was discharged based upon a history of poor attendance. The claimant had been repeatedly warned by the employer prior to being discharged. The claimant had received a final warning on June 4, 2010. Mr. Kimmer was again absent on June 7 when he "lost the keys to his car." Although aware of his responsibility to

provide advance notification to the employer, the claimant did not provide one-half hour advance notice as required and the claimant did not utilize alternative transportation to report to work although the work site was within two and one-half miles proximity to the claimant's residence.

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The Court held that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer. The Court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility" e.g. transportation problems and/or oversleeping are considered unexcused.

The evidence in the record establishes that the claimant had been excessively absent in the past and had been repeatedly warned by the employer prior to being discharged. As the claimant's last absence was a matter of personal responsibility and the claimant did not provide adequate notice, the administrative law judge concludes that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated June 29, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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