

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**KENNETH W ELDERS  
253 HAYWOOD DR  
IOWA CITY IA 52245-1522**

**SYSTEMS UNLIMITED INC  
1556 – 1<sup>ST</sup> AVE S  
IOWA CITY IA 52240**

**Appeal Number: 06A-UI-01699-CT  
OC: 01/15/06 R: 03  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Systems Unlimited, Inc. filed an appeal from a representative's decision dated February 3, 2006, reference 01, which held that no disqualification would be imposed regarding Kenneth Elders' separation from employment. After due notice was issued, a hearing was held by telephone on March 1, 2006. The employer participated by Kari Wilken, Human Resources Specialist. Mr. Elders did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Elders was employed by Systems Unlimited, Inc.

from June 7 until October 6, 2005 as a part-time counselor working approximately 20 hours each week. The employer provides services to developmentally disabled individuals. Mr. Elders was discharged because of his attendance.

Mr. Elders received a written warning on August 19 because he missed a documentation class. On August 27, he was late reporting for work for unknown reasons. On September 27, he was over four hours late because of car problems. He reported the intended tardiness to another staff member rather than to his supervisor as required. Mr. Elders received a final written warning on September 27. He was five hours late on October 1 because of car problems. As a result, he was discharged on October 6, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Elders was separated from employment for any disqualifying reason. 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 receiving benefits if he was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Mr. Elders was employed by Systems Unlimited, Inc. for only four months. During that time, he was absent from a required class and late on three occasions. Two of the occasions of tardiness were by several hours and were due to car problems. Absences caused by matters of purely personal responsibility, such as transportation, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The three occasions of tardiness are sufficient to establish excessive unexcused absenteeism, especially given the length of the last two occasions and the relatively short period of employment. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. Accordingly, benefits are denied.

No overpayment results from this reversal of the prior allowance as Mr. Elders has not been paid benefits on his claim filed effective January 15, 2006.

#### DECISION:

The representative's decision dated February 3, 2006, reference 01, is hereby reversed. Mr. Elders 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.

cfc/tjc