

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRON E WALL
Claimant

APPEAL NO. 09A-UI-03516-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

**Original Claim: 01/04/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Terron E. Wall, claimant, filed a timely appeal from an unemployment insurance decision dated February 24, 2009, reference 02, that denied benefits. After due notice was issued, a telephone hearing was held March 30, 2009 with the claimant participating. Julie Haitt, accountant, participated for the employer.

ISSUE:

Was the claimant discharged for excessive unexcused absenteeism?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Terron E. Wall was employed from May 19, 2008 through September 3, 2008. He was discharged on September 3, 2008 for excessive absences. Mr. Wall received a written warning for missing August 13, 2008, the day his child was born. The claimant left the workplace on August 12, 2008 in mid-shift after telling a supervisor he had to go to the hospital. The claimant missed work on August 13, 14, and 15, 2008. The claimant brought a doctor's excuse to show his absences on August 12, 13, 14, and 15 were legitimate. The claimant called in work before his shift started on September 3, 2008 and informed his supervisor he was going to be a little late due to the weather. His supervisor told him not to bother and informed him he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for excessive unexcused absenteeism. It does not.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). While excessive unexcused absenteeism is misconduct, the Supreme Court of Iowa has ruled that absence due to a medical condition cannot be held against an employee for unemployment insurance purposes, provided the employee properly reports the absences to the employer. See Higgins and 871 IAC 24.32(7).

The evidence in this record establishes that the absences leading directly to the claimant's discharge were excused for unemployment purposes. Missing work due to the birth of a child is not an unexcused absence. The claimant credibly testified he called in and let his employer know about his absences in August and September. The record does not show excessive nor unexcused absences for unemployment purposes. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated February 24, 2009, reference 02, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw