

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMON K ROONEY
Claimant

APPEAL NO. 08A-UI-09224-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABC MORTGAGE INC
Employer

**OC: 09/07/08 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Damon Rooney filed an appeal from a representative's decision dated September 30, 2008, reference 01, which denied benefits based on his separation from ABC Mortgage, Inc. After due notice was issued, a hearing was held by telephone on November 10, 2008. Mr. Rooney participated personally. The employer participated by Tammy Yamilkoski, President.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Rooney was employed by ABC Mortgage, Inc. from May of 2006 until August 19, 2008. He was employed full time as a loan originator. He was discharged because of his attendance. The final event that prompted his discharge was the fact that he was absent from a staff meeting on August 18 without notice. He was absent from work on this occasion because he was canoeing with his grandfather. He told a loan processor that he would not be there but did not notify the appropriate members of management.

Mr. Rooney was free to set his own work hours. In February of 2008, he was asked to provide a written schedule as to when he planned to be in the office. He was not always at work on the dates and times he set and, therefore, others had to assist clients assigned to him. The employer had planned to discharge him in May of 2008 because of his attendance but decided to give him an additional chance. Mr. Rooney was not available to work full time for the employer in June because he went to work for a temporary placement firm to assist with flood recovery activities in the Cedar Rapids area.

Mr. Rooney was only working approximately 15 hours each week after the June flooding. He could not work full time because he lost his means of transportation. Because he was not

working full time as expected, the decision was made to discharge him after the unreported absence of August 18, 2008.

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). Mr. Rooney was discharged because of his attendance. He was allowed to set his own work schedule. However, the employer needed to know when he was going to be at work on a day-to-day basis. The administrative law judge is not inclined to believe the employer authorized him to come and go as he saw fit without any accountability. Others had to perform work assigned to him if he was not in the office. Because of his unpredictable schedule, he was not always available to clients.

By his own admission, Mr. Rooney was only working approximately 25 hours each week after the flood. His failure to work the number of hours expected of him and his failure to keep the employer informed as to when he intended to work constituted a substantial disregard of the standards the employer had the right to expect. The employer was hampered in its ability to serve clients if it did not know on a daily basis when to expect Mr. Rooney at work. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated September 30, 2008, reference 01, is hereby affirmed. Mr. Rooney 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw