

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES E DEVRIES**

Claimant

**APPEAL NO. 09A-UI-16200-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LAWN RANGER LAWN CARE INC**

Employer

**Original Claim: 01-04-09**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 15, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 3, 2009. The claimant did participate along with his witness, Dan Cannon, Supervisor. The employer did participate through Mark Pederson, Owner.

**ISSUE:**

Was the claimant discharged for work-related misconduct or did he voluntarily quit his employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a laborer, full-time, beginning in the fall of 2007 through September 14, 2009, when he was discharged.

When the claimant was hired by Mr. Pederson, the employer knew that he did not have a valid driver's license nor did he have a car to get to work. For the last one year of the claimant's employment, he was picked up most days by Dan Cannon, his supervisor, and taken to work. Mr. Cannon went on vacation and admits that he did not tell the claimant that he would not be able to pick him up for work on September 14. Mr. Cannon believed that the claimant knew he would not be able to take him to work despite the fact that he never told him he would be gone through Monday. When Mr. Cannon had gone on prior vacations to Las Vegas, he had always returned on Sunday night and picked up the claimant for work the following Monday. When Mr. Cannon did not pick him up on September 14, the claimant called his cell phone and left him a message. The claimant did not call Mr. Pederson. At hearing, Mr. Pederson admitted that it was acceptable for an employee to call either him or Mr. Cannon. The claimant had on one other occasion been a no-call, no-show for work on June 30, 2009. He had no final warning that his job was in jeopardy and had no other instances of unexcused absenteeism during his two years of employment.

When the claimant had not shown up for work by 8:30 a.m., Mr. Pederson drove to his house, picked up the company cell phone and materials, and told the claimant that he was considered a voluntary quit because he did not show up for work. The claimant tried to explain that he thought Mr. Cannon was going to pick him up for work. If the claimant had known that he needed a ride to work on September 14 he could have asked Mr. Pederson for a ride and Mr. Pederson would have taken him into work as he had on previous occasions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant just did not know that Mr. Cannon was not going to pick him up as he had for the past one year. Mr. Cannon admits that he never told the claimant that he would not pick him up for work on September 14. Under these circumstances, the administrative law judge concludes that the claimant did not voluntarily quit his employment but that he was discharged by the employer.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The claimant had one other instance of missing work in two years. He had no warning that his job was in jeopardy. The claimant was entitled to fair warning that the employer was no longer going to tolerate his performance and conduct. Without fair warning, the claimant had no way of knowing that there were changes he needed to make in order to preserve his employment. The employer has not established excessive unexcused absenteeism. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The October 15, 2009, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw