

**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**

**KEITH R TUTTLE
11762 – 100TH AVE
MELROSE IA 52569**

**DUEA MOTOR COMPANY
113 S MAIN ST
ALBIA IA 52531**

**Appeal Number: 05A-UI-11306-AT
OC: 10-09-05 R: 03
Claimant: Appellant (1)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Keith R. Tuttle filed a timely appeal from an unemployment insurance decision dated October 26, 2005, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held November 15, 2005 with Mr. Tuttle participating. Owner Mike Duea participated for the employer.

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: Keith R. Tuttle was employed by Duea Motor Company from June 15, 1992 until he was discharged August 4, 2005. He last worked as a

transport driver. Mr. Tuttle lives in Appanoose County, and the employer is located in Monroe County. Mr. Tuttle was arrested and has been charged with a crime. He is free on bond but is restricted to Appanoose County. He is unable to return to work for this reason. The employer has discharged Mr. Tuttle for failing to report to work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his work. It does.

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). Absence due to matters of personal responsibility are considered unexcused whether or not the employee notifies the employer of the reason for the absence. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The evidence in this record establishes that the claimant has been discharged because of his inability to come to work which is the result of his actions which have led to a criminal charge. Benefits are withheld.

DECISION:

The unemployment insurance decision dated October 26, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

kkf/kjw