

**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**

**GREGORY S KAUFFMAN  
811 ELLIS ST  
OTTUMWA IA 52501**

**ABC BEVERAGE MANUFACTURERS INC  
ATTN HUMAN RESOURCES  
PO BOX 4656  
DES MOINES IA 50306**

**Appeal Number: 06A-UI-04904-CT  
OC: 04/09/06 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, 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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gregory Kauffman filed an appeal from a representative's decision dated May 1, 2006, reference 01, which denied benefits based on his separation from ABC Beverage Manufacturers, Inc. (ABC). After due notice was issued, a hearing was held by telephone on June 1, 2006. Mr. Kauffman participated personally. The employer participated by Brenda Dixon, Regional Human Resources Manager, and Tim Couch, Warehouse Supervisor. Exhibits One through Five were admitted on the employer's behalf.

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. Kauffman was employed by ABC from May 8,

2000 until April 13, 2006. He was last employed full time as a forklift operator. He was discharged because of his attendance. The employer tracks attendance on a point system whereby an individual is subject to discharge if he receives six points within a rolling 12-month period. The employer posts a notice each month showing an individual's point accumulation during the preceding 12 months.

Mr. Kauffman was absent for personal reasons on January 11 and February 15, 2006. He received a written warning on February 18 that advised he had four attendance points. He was absent for personal reasons on February 21, 2006, but did not give timely notice of his intent to be absent. He received another written warning on February 23, 2006, advising him that he was at five points and would be terminated if he reached six points within 12 months. On March 30, 2006, Mr. Kauffman received a second written warning advising that he was at five points. During the interim since his prior warning on February 23, a point had dropped off but he was then absent on March 29. The absence of March 29 was not timely reported.

Mr. Kauffman's discharge was triggered by the fact that he was one hour late on April 12 and one and one-half hour late on April 13. On April 12, he called his lead person and indicated that his alarm clock did not go off. On April 13, he called his lead person and indicated he had a flat tire. Mr. Kauffman was notified of his discharge in a letter dated April 13, 2006. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Kauffman 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. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence and is, therefore, assessed by the same criteria.

Mr. Kauffman failed to give timely notice of his absences on February 21 and March 29, 2006. Since the evidence does not establish any reasonable cause for the failure to give timely notice, both absences are unexcused. The absences of January 11 and February 15, 2006 are unexcused as they were for personal reasons. Mr. Kauffman knew as of the warning on March 30 that he had five attendance points and would be discharged if he reached six points. The decision to discharge was prompted by the fact that he was over one hour late on two consecutive days. Even if the administrative law judge were to give Mr. Kauffman the benefit of the doubt and find that there was a power failure that prevented him from getting up on time on April 12, there would still be the matter of the tardiness of April 13.

Mr. Kauffman testified that he lived 20 miles from work and was almost there when he had a flat tire on April 13. He initially testified that it took him 20 to 30 minutes to change the tire but later indicated it took 45 to 50 minutes to make the change. Even if it took him 50 minutes to change the tire, he still did not report for work until 40 minutes later. If he only lived 20 miles from work and was almost there when he got the flat, one would not have expected him to be one and one-half hour late to work. This factor, along with the fact that he was an hour late the day before, persuades the administrative law judge that Mr. Kauffman did not have a flat tire that caused him to be late on April 13. Therefore, the tardiness is unexcused.

Mr. Kauffman had five periods of unexcused absenteeism during a period of approximately three months beginning January 11, 2006. The administrative law judge considers this excessive. Mr. Kauffman had ample warning that his attendance was jeopardizing his continued employment with ABC. In spite of knowing his point status, Mr. Kauffman did not take those steps necessary to avoid accumulating sufficient points to warrant his termination. The evidence establishes excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. For the reason stated herein, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 1, 2006, reference 01, is hereby affirmed. Mr. Kauffman was discharged by ABC 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/kkf