

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**IRVING L GRIFFIN JR**  
Claimant

**APPEAL NO. 08A-UI-05014-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS MANUFACTURING CO**  
Employer

**OC: 04/27/08 R: 04  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Irving Griffin filed an appeal from a representative's decision dated May 21, 2008, reference 01, which denied benefits based on his separation from Sears Manufacturing Company (Sears). After due notice was issued, a hearing was held by telephone on June 10, 2008. Mr. Griffin participated personally. The employer did not respond to the notice of hearing.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Griffin was employed by Sears from April 26, 2002 until April 16, 2008 as a full-time laborer. He was discharged because of his attendance. The final attendance infraction was on April 11, 2008 when he was approximately five minutes late due to car trouble. Mr. Griffin had received warnings regarding his attendance. Attendance was the only reason given for the discharge.

**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). 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.

It was incumbent upon the employer to provide specific details concerning the reason for Mr. Griffin's discharge as mere allegations of misconduct are not sufficient to result in disqualification. See 871 IAC 24.32(4). Sears did not participate in the hearing to provide details of Mr. Griffin's attendance history. He acknowledged that he was late on April 11 due to

car trouble. The absence caused by his tardiness on this occasion represented an unexcused absence as absences due to matters of personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The record does not contain evidence of other absences that might be unexcused. There may well have been other unexcused absences but the employer did not present evidence of other occasions.

The one period of unexcused absenteeism identified in the record is not sufficient to establish excessive unexcused absenteeism within the meaning of the law. Inasmuch as the employer has not provided evidence to support a disqualification from benefits, it is concluded that the employer has failed to satisfy its burden of proof. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated May 21, 2008, reference 01, is hereby reversed. Mr. Griffin was discharged by Sears but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs