

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

JAMIEN J SYBESMA
304 – 3RD ST
MANNING IA 51455

SOLL'S SERVICE INC
217 MAIN ST
MANNING IA 51455

Appeal Number: 05A-UI-01411-CT
OC: 12/26/04 R: 01
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:

Jamien Sybesma filed an appeal from a representative's decision dated January 18, 2005, reference 01, which denied benefits based on his separation from Soll's Service, Inc. After due notice was issued, a hearing was held by telephone on February 24, 2005. Mr. Sybesma participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Sybesma was employed by Soll's Service, Inc. from May

of 1998 until November 29, 2004 as a full-time service technician. He was discharged because of his attendance.

Mr. Sybesma was at least one hour late reporting for work on four occasions from April 22 through July 24, 2004. He was late an additional 13 times from June 12 through November 22, 2004. The tardiness ranged from 10 minutes to 33 minutes. Mr. Sybesma was absent without calling in on July 7, 2004 because he had car trouble and was not near a telephone. He received at least one verbal warning about his attendance, the last of which was on October 1, 2004. The decision to discharge Mr. Sybesma was due to the fact that he was absent without calling in on November 27, 2004. The reason for the absence is unknown. Mr. Sybesma was discharged when he reported to work on his next scheduled day, November 29, 2004. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sybesma 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 job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Mr. Sybesma had two unreported absences and 17 occasions of tardiness during a period of approximately seven months. The evidence does not establish any reasonable cause for the repeated tardiness. Mr. Sybesma was warned about his tardiness but did not take those steps necessary to correct his attendance and preserve his employment. He may well have made up his time on those occasions when he was late. However, the employer had the right to expect him to report to work timely, regardless of whether the time would be made up. The attendance infractions identified herein are sufficient to establish excessive unexcused absenteeism within the meaning of the law. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated January 18, 2005, reference 01, is hereby affirmed. Mr. Sybesma 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.

cfc/tjc