

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

MARCUS L HINTON  
APT 7 2400 HICKMAN RD  
DES MOINES IA 50310-6129

DEE ZEE INC  
c/o ADP UCM/THE FRICK CO  
PO BOX 66744  
ST LOUIS MO 63166-6831

Appeal Number: 06A-UI-03167-AT  
OC: 02/19/06 R: 02  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marcus L. Hinton filed a timely appeal from an unemployment insurance decision dated March 6, 2006, reference, 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was on held March 30, 2006, with Mr. Hinton participating. His former employer, Dee Zee, Inc., did not respond to the hearing notice.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Marcus L. Hinton worked as a forklift driver and

order picker for Dee Zee, Inc. from April 2005 until he was discharged February 17, 2006. Mr. Hinton was absent on February 16, 2006 because he had been arrested due to unpaid fines. He was discharged at his home on February 17, 2006 as he prepared to leave for work.

Mr. Hinton had been tardy on several occasions during his employment. He also missed work one day a month to meet with his probation officer. Mr. Hinton had recently received a warning, but it indicated that he would be given a three-day suspension if there were more instances of absence or tardiness.

#### 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, a concept which includes tardiness, is 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 individual properly reports them to the employer. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The evidence in this record establishes that Mr. Hinton was absent on February 16, 2006 due to a matter of personal responsibility, his failure to pay fines imposed by the court. The evidence also establishes monthly absences due to his required meetings with his probation officer. These, too, were absences due to matters of personal responsibility. Finally, the evidence establishes that Mr. Hinton had been on more than one occasion tardy. This evidence in the context of a warning is sufficient to establish excessive unexcused absenteeism.

Mr. Hinton argued that he should not have been discharged but only suspended. Had he been suspended, the administrative law judge would have analyzed the evidence as though it had been a discharge. See 871 IAC 24.32(9). Furthermore, the administrative law judge does not rule on whether the employer followed its own procedures but whether the separation was for actions constituting misconduct as that term is defined for unemployment insurance purposes. Benefits must be withheld.

#### DECISION:

The unemployment insurance decision dated March 6, 2006, 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.

cs/tjc