

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

ALLEN D BOTHWELL
338 BENTON ST
COUNCIL BLUFFS IA 51501

BARTON SOLVENTS INC
PO BOX 221
DES MOINES IA 50301

Appeal Number: 04A-UI-02002-CT
OC: 01/04/04 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
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Allen Bothwell filed an appeal from a representative's decision dated February 6, 2004, reference 01, which denied benefits based on his separation from Barton Solvents, Inc. After due notice was issued, a hearing was held by telephone on March 15, 2004. Mr. Bothwell participated personally. The employer participated by Dan Clevenger, Operations Manager, and Keith Wohlers, Office Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: The representative's decision which is the subject of this appeal was mailed to Mr. Bothwell at his last-known address of record on February 6, 2004. He did not receive the decision and did not learn of the disqualification until he contacted his local office on or about February 24, 2004. He filed his appeal the same day.

Mr. Bothwell began working for Barton Solvents, Inc. on March 3, 2003. He worked full time in the warehouse and as a driver. He was discharged because of his attendance. He was verbally warned about his attendance on a number of occasions. All of his absences prior to January 5, 2004 were due to illness or were arranged in advance. He failed to give notice of his intent to be absent on November 11. On November 18, Mr. Bothwell received a written warning regarding his attendance.

Mr. Bothwell called to report that he would be absent on January 5 because his wife was having a baby. She was scheduled to have a Caesarian delivery on that date. On January 6, Mr. Bothwell notified the employer that he would be absent because he did not have child care. On January 7, he notified the employer that he would not be in for the remainder of the week because he did not have child care. He did not tell the employer that it was medically necessary that he remain home with his wife to assist her after the delivery. Because of his anticipated absences, the employer discharged Mr. Bothwell on January 7. His wife came home on January 8. Attendance was the sole reason for his discharge from the employment.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Bothwell's appeal should be considered timely filed. Because he did not receive the disqualifying decision, he could not have perfected an appeal by the February 16, 2004 due date. Therefore, his appeal filed on February 24, 2004 shall be considered timely filed.

The next issue in this matter is whether Mr. Bothwell 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 in connection with the employment. The employer had the burden of proving disqualifying job 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. His absence of November 11 is unexcused as it was not properly reported to the employer. Although Mr. Bothwell called in on November 10 due to illness, he did not call the following day and had not given any indication on November 10 that he would be absent the next day.

Mr. Bothwell had been verbally warned about his attendance a number of times. He was clearly on notice as of November 18 that his attendance was jeopardizing his continued employment. In spite of the warning, he had two consecutive unexcused absences on January 6 and 7. The absences were due to lack of child care. Absences caused by matters of purely personal responsibility, such as child care, are not considered excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The absences of January 6 and 7 were not due to the fact that he had to assist his wife following the delivery of their child as she was not released from the hospital until January 8. Mr. Bothwell suggested at one point that, had he

known the absences would result in his discharge, he would have been able to make child care arrangements. Since he knew that his attendance was unsatisfactory, he should have made other arrangements regardless of whether he had advance knowledge that these specific absences would result in discharge.

Mr. Bothwell's unexcused absences after the warning in November is sufficient to establish disqualifying misconduct. He was absent on January 6 and 7 for personal reasons and anticipated being absent January 8 and 9 for personal reasons. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated February 6, 2004, reference 01, is hereby affirmed. Mr. Bothwell 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/b