

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

CHERYL R ELLIOTT
7492 UNIVERSITY FARM
LANCASTER WI 53813-9733

EAGLE WINDOW & DOOR INC
ATTN AMY TURNER
PO BOX 1072
DUBUQUE IA 52004

Appeal Number: 06A-UI-02992-CT
OC: 02/05/06 R: 04
Claimant: Respondent (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:

Eagle Window & Door, Inc. filed an appeal from a representative's decision dated March 6, 2006, reference 01, which held that no disqualification would be imposed regarding Cheryl Elliott's separation from employment. After due notice was issued, a hearing was held by telephone on April 3, 2006. Ms. Elliott participated personally. The employer participated by Amy Turner, Human Resources Representative. Exhibits One through Seven 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: Ms. Elliott was employed by Eagle from December 6, 2004 until February 21, 2006 as a full-time assembler. She was discharged because of her attendance. The employer tracks attendance on an occurrence system. An individual is subject to discharge if she accumulates nine occurrences.

The employer requires 15 minutes' notice of intended absences. Ms. Elliott was absent due to illness on April 8, 2005 but called over 2 hours after the start of her shift. She was absent on April 15 because her car would not start. On May 2, she overslept and did not report her absence until over 1 hour after the start of her shift. On May 4, she did not report her absence until over 2 hours after the start of her shift. Ms. Elliott was 6 minutes late reporting for work on July 20. On February 17, 2006, she was on her way to work when she realized she was too sick to work. She stopped at a gas station to call the employer approximately 8 minutes before the start of her shift. She called 12 minutes before the start of her shift on February 20 to report that she was still ill and would not be at work.

Ms. Elliott received written warnings regarding her attendance on February 10 and March 18, 2005. She received another warning on April 21. She received an additional warning and a three-day suspension on May 10. Ms. Elliott did not have any attendance infractions between July 20, 2005 and February 17, 2006. She was notified of her discharge on February 21, 2006. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Elliott 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 she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. There must be a current act of unexcused absenteeism to support a disqualification from benefits. See 871 IAC 24.32(8).

In the case at hand, Ms. Elliott's discharge was triggered by her final absences on February 17 and 20. Both absences were due to illness, which is reasonable grounds for missing work. However, they were not timely reported. Ms. Elliott did not anticipate being absent on February 17 as she was on her way to work when she became too ill to work. Since she did not know 15 minutes before her shift that she would not be at work, she could not have given the employer the required notice. Ms. Elliott did not timely report her absence of February 20. However, the 3-minute delay was not so significant a deviation from the employer's expectations as to constitute a substantial disregard of the employer's standards. For the above reasons, the administrative law judge concludes that the absences of February 17 and 20 are excused.

The last unexcused absence on Ms. Elliott's record is that of July 20, 2005 when she was six minutes late reporting for work. This instance of tardiness was not a current act in relation to the February 21, 2006 discharge date. Inasmuch as there was no current act of unexcused absenteeism, no disqualification is imposed. While the employer may have had good cause to

discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 6, 2006, reference 01, is hereby affirmed. Ms. Elliott was discharged by Eagle but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc