

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANTE M MALONE
Claimant

APPEAL NO. 07A-UI-08540-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

**OC: 08/12/07 R: 03
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dante Malone filed an appeal from a representative's decision dated September 4, 2007, reference 01, which denied benefits based on his separation from Schenker Logistics, Inc. After due notice was issued, a hearing was held by telephone on September 24, 2007. Mr. Malone participated personally. The employer did not respond to the notice of hearing.

ISSUE:

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

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: Mr. Malone began working for Worley Warehouse in August of 2004. In August of 2005, the business became known as Schenker Logistics, Inc. Mr. Malone was employed full time as a forklift operator. He was discharged because of his attendance. The final attendance infraction occurred on August 5 when Mr. Malone was seven minutes late reporting to work because of car trouble. He was on vacation the following four days and was discharged when he returned to work on August 10.

Mr. Malone had been absent from work on occasion because of health issues related to his infant daughter and his mother. He tried to request time off in advance when he knew of future medical appointments. He had received warnings about his attendance. Attendance was the only reason given Mr. Malone for his separation from the employment.

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. The administrative law judge is not bound by an employer's designation of an absence as unexcused.

The employer did not participate in the hearing to provide evidence concerning the dates and reasons for Mr. Malone's absences. The fact that an individual receives warnings about attendance does not establish that the absences are unexcused. The final absence that prompted the discharge was on August 5 when Mr. Malone was seven minutes late after his car stalled on the way to work. Absences caused by matters of purely personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence does not establish a history of Mr. Malone being absent due to transportation issues. Given the unexpected nature of the transportation issue on August 5 and given that there was no history of transportation problems, the administrative law judge concludes that the one unexcused absence of August 5 is not sufficient to establish excessive unexcused absenteeism.

The employer did not present evidence of any other unexcused absence that constituted a current event in relation to the August 10 discharge. Inasmuch as the employer failed to establish excessive unexcused absenteeism, no disqualification is imposed. While the employer may have had good cause to discharge Mr. Malone, 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).

DECISION:

The representative's decision dated September 4, 2007, reference 01, is hereby reversed. Mr. Malone was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw