

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENE A ZARBANO
Claimant

APPEAL NO. 08A-UI-01603-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENSEN BUILDERS LTD
Employer

**OC: 01/06/08 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jensen Builders, Ltd. (Jensen) filed an appeal from a representative's decision dated February 5, 2008, reference 02, which held that no disqualification would be imposed regarding Jene Zarbano's November 20, 2007 separation from employment. After due notice was issued, a hearing was held by telephone on March 12 and March 28, 2008. Mr. Zarbano participated personally and offered additional testimony from Janet Spry of Verizon. Exhibit A was admitted on his behalf. The employer participated by Matt Jacobsen, Foreman; Mick McBride, Human Resources Manager; and Nate Galles, General Superintendent. Exhibit One was admitted on the employer's behalf. Participating in the hearing pursuant to subpoenas issued on Mr. Zarbano's behalf were Dave Thomas and Mike Cooley.

ISSUE:

At issue in this matter is whether Mr. Zarbano was separated from employment on November 20, 2007 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. Zarbano began working for Jensen on June 11, 2007 as a full-time concrete finisher. He left the employment voluntarily on October 5, 2007 for personal reasons. He returned to the employment on October 31, 2007. He was discharged because of his attendance. Before he was rehired, Mr. Zarbano was told his attendance had to improve over what it had been during his prior period of employment.

Mr. Zarbano missed time from work on November 1 because his knee was bothering him. He missed approximately six hours of work on November 13 because he consumed too much alcohol the night before. He was verbally warned after the November 1 incident and again after that of November 13. Mr. Zarbano was to be picked up for work at his home on November 20 and 21. Matt Jacobsen went to his home on both mornings and waited 10 to 15 minutes. When Mr. Zarbano did not appear, he left. The lights were out and it did not appear that anyone was up in the home. Mr. Zarbano did not attempt to call Mr. Jacobson on either November 20 or

November 21. Mr. Jacobson did not attempt to pick Mr. Zarbano up after November 21 because of the fact that he did not appear on either November 20 and 21.

Mr. Zarbano was notified of his discharge on November 23. Attendance was the sole reason for the separation.

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.

Mr. Zarbano was warned when he was rehired on October 31 that his attendance needed to improve. He missed six hours of work on November 13 because he drank too much the night before. Having a hangover is not reasonable grounds for missing time from work and, therefore, the absence is unexcused. The absences of November 20 and November 21 are also unexcused as they were not properly reported to the employer. The evidence of record does not establish any justification for the failure to notify the employer of the intent to be absent on November 20 and 21.

Mr. Zarbano contended that his absences of November 20 and 21 were due to the fact that no one came to pick him up on those dates. The administrative law judge found the employer's evidence on the issue more credible. Mr. Jacobsen did not stop picking him up until he failed to appear on two consecutive days. He was, in fact, at Mr. Zarbano's home on November 20 and 21 at the designated time. It is clear from the telephone records submitted by the employer that Mr. Zarbano made no attempt to call Mr. Jacobsen to find out why he had not been picked up. Although Mr. Zarbano submitted his own telephone records, they do not cover any timeframe after November 2. If there were, in fact, calls made, the administrative law judge cannot understand why his service provider would not have a record of such calls. Whether there was a break in his service or not, the fact remains that he testified to making calls.

Mr. Zarbano had three unexcused absences during a period slightly in excess of one week. The administrative law judge considers this excessive. In light of the warnings he received at the time of rehire and after the November 13 period of absence, he knew or should have known that his failure to report to work or contact the employer could result in his discharge. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and, as such, is misconduct within the meaning of the law. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated February 5, 2008, reference 02, is hereby reversed. Mr. Zarbano was discharged on November 23, 2007 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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