

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D CAPPS
Claimant

APPEAL NO. 07A-UI-10965-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE BRANDS LLC
Employer

**OC: 10/07/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Robert D. Capps (claimant) appealed a representative's November 19, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Advance Brands, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 12, 2007. The claimant participated in the hearing. Jason Jauron appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 25, 2007. He worked full time in production in the employer's food processing facility. His last day of work was October 3, 2007. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

The employer allows employees six points in a year. Since June 25 through September 25, the claimant had incurred the following points:

| Date | Occurrence/reason if any | Points assessed/total accum. |
|----------|--|------------------------------|
| 07/17/07 | Absence, sick. | 1 / 1.0. |
| 07/25/07 | Absence, sick. | 1 / 2.0. |
| 07/28/07 | Absence, car broke down. | 1 / 3.0 |
| 08/04/07 | Absence, sick. | 1 / 4.0 |
| 09/07/07 | Tardy w/ notification, childcare issues. | .5 / 4.5 |
| 09/14/07 | Left work early due to childcare issues. | .5 / 5.0 |
| 09/25/07 | Tardy w/ notification, childcare issues. | .5 / 5.5 |

Upon reaching four points on August 4, the claimant was given a warning and suspension on August 6, 2007.

The claimant's work schedule had previously been for a start time of 7:00 a.m.; as of September 20, the work schedule was modified as per the employer's needs to 6:00 a.m. The claimant had been made aware upon hire that the work schedule could be subject to modification. However, the earlier start time caused some problem with the claimant's childcare situation as the childcare did not open until 5:30 a.m. He had discussed the problem with his supervisor, seeking permission for a later start time, but his supervisor had denied his request. He did not pursue the matter further with higher management or with human resources.

On September 28 the claimant was a minute late due to the childcare issue without prior notification to the employer, resulting in the assessment of one point, bringing him to 6.5 points; again on October 2 he was three minutes late due to the childcare situation, which would have taken him to 7.5 points. As a result of exceeding the allowable points, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Tardies are treated as absences for purposes of unemployment insurance law. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absences due to issues that are of purely personal responsibility including childcare issues are not excusable. Higgins, supra.; Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final tardies were not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences or tardies could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 19, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 3, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw