

#### 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. Peterson was employed by Northern Iowa Die Casting, Inc. from March 13 until August 23, 2005 as a full-time metal caster. He was discharged because of his attendance.

Mr. Peterson was absent on 11 occasions because he did not have transportation to work. The last such occasion was on August 17. He was absent without calling in on June 24. Mr. Peterson was warned about his attendance during his performance evaluation on July 1. Thereafter, he missed five days because he had no transportation before receiving his verbal warning. He was verbally warned about his attendance on August 10. Mr. Peterson was then absent on August 17 because he had no transportation. His final absence was on August 22 when he properly reported that he would be absent due to illness. He was notified of his discharge on August 23, 2005.

Mr. Peterson has received \$441.00 in job insurance benefits since filing his claim effective August 21, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Peterson 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 he was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences.

Mr. Peterson was absent on 11 occasions because of transportation issues. Absences caused by matters of purely personal responsibility, such as transportation, are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). In addition, he had an unreported absence on June 24. This absence is unexcused as it was not properly reported and the evidence does not establish any reasonable cause for not reporting it. The absence of August 22 is excused as it was for reasonable cause and was properly reported.

Mr. Peterson was in this employment for slightly over five months. During this period, he had 12 unexcused absences. This is excessive. The decision to discharge was triggered by an excused absence. Mr. Peterson's unexcused absence of August 17 was three working days before his discharge. The administrative law judge considers this sufficiently current to sustain a disqualification from job insurance benefits. Excessive unexcused absenteeism constitutes a substantial disregard for the standards an employer has the right to expect. For the reasons cited herein, the administrative law judge concludes that benefits should be denied.

Mr. Peterson has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 9, 2005, reference 01, is hereby reversed. Mr. Peterson 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. Mr. Peterson has been overpaid \$441.00 in job insurance benefits.

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