

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. Starbuck began working for Millard on October 18, 2004 as a full-time warehouse worker. He was discharged because of his attendance.

Mr. Starbuck was absent on 19 occasions and late on 16 occasions between the date of hire and March 18, 2005. He received written warnings on February 14 and March 14, 2005 concerning his attendance. On March 17, he was absent without calling in because he was in jail. As a result, he was given another written warning and a one-day suspension. The warning advised that he would receive a three-day suspension if he was absent again before April 18, 2005. Mr. Starbuck was 45 minutes late because he overslept on April 20. He was absent due to illness on April 21 and 22. He received a written warning and three-day suspension on April 28. The warning advised that he would be discharged if he was absent or late within the following 60 days.

Mr. Starbuck's last day at work was June 14. He called on June 15 to report that he would be absent. When he reported his intended absence of June 16, the decision was made to discharge him from the employment. Mr. Starbuck provided the employer with doctor's excuses for June 15, 16, and 17. Attendance was the sole reason for the June 20, 2005 discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Starbuck 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. Moreover, there must be a current act of unexcused absenteeism to support a disqualification from benefits.

Mr. Starbuck's last unexcused absence was on March 17 when he was absent without notice. He had additional absences after March 17 and before the decision was made on June 17 to discharge him. However, the employer failed to establish that the interim absences were unexcused. The absences appear to have been caused by Mr. Starbuck's own illness or that of his wife or child. The employer failed to establish that Mr. Starbuck failed to properly report his absences between March 17 and June 17. The employer was unsure as to whether he called on June 16 or June 17. The employer is in possession of the records that would establish whether the calls were made. Absent evidence to the contrary, any doubt as to whether Mr. Starbuck called on June 16 and 17 shall be resolved in his favor. Although he called in late on June 20, the decision to discharge him had already been made at that point. Mr. Starbuck's last occasion of tardiness was on April 20, 2005. It represented an unexcused absence as it was due to oversleeping, which is not reasonable grounds for missing time from work.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish a current act of unexcused absenteeism. The unreported absence of March 17 and the tardiness of April 20 are too remote in time to be considered current acts in relation to the June 20 discharge. For the above reasons, it is concluded that the employer has

failed to establish that Mr. Starbuck was discharged for a current act of misconduct. Accordingly, no disqualification is imposed.

DECISION:

The representative's decision dated September 27, 2005, reference 02, is hereby affirmed. Mr. Starbuck was discharged by Millard but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjw