

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**FLORA BLANCO
546 WALKER ST
DES MOINES IA 50316**

**OZARK AUTOMOTIVE DISTRIBUTORS INC
233 S PATTERSON
PO BOX 1897
SPRINGFIELD MO 65801**

**Appeal Number: 04A-UI-10846-CT
OC: 09/12/04 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ozark Automotive Distributors, Inc. filed an appeal from a representative's decision dated October 1, 2004, reference 01, which held that no disqualification would be imposed regarding Flora Blanco's separation from employment. After due notice was issued, a hearing was held by telephone on November 2, 2004. Ms. Blanco participated personally. The employer participated by Sarah Kessler-Deustch, Human Resources Supervisor; Cheryl Branson, Order Selection Supervisor; and Christine Rodda, Assistant Order Selection Supervisor. Exhibits One through Ten were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Blanco was employed by Ozark Automotive Distributors, Inc. from August 13, 2001 until September 17, 2004. She was employed full time as an order picker. She was discharged after receiving repeated warnings regarding her attendance.

Ms. Blanco received a written warning on April 24, 2003 because she had been late on March 6, April 15, and April 23. The tardiness of April 15 was due to car trouble. She was late on July 2 for unknown reasons. Ms. Blanco received a second written warning on July 3, 2003. On July 24, Ms. Blanco was absent due to illness but did not call before the start of her shift as required. She called 30 minutes late. On August 6, she was late because she did not have a sitter until 9:00 a.m. She was to be to work by 5:00 a.m. She was given another warning and a "decision-making" day on August 7, 2003 to determine how she was going to correct her attendance. On November 12, 2003, Ms. Blanco was given a final written warning regarding her attendance. The only absence since her prior disciplinary action had been on November 10 when she had to leave early because her son was ill.

On January 21, 2004, Ms. Blanco was given another final written warning regarding attendance. She had been 45 minutes late on January 21 because of car trouble. She was given an additional "decision-making" day on August 11, 2004 because she had been 15 minutes late to work on August 9. The final incident which triggered the discharge occurred on September 17 when Ms. Blanco was 15 minutes late because of a flat tire. Attendance was the sole reason for her September 17, 2004 discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Blanco 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 job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness in reporting for work is considered a limited absence from work.

Part of the reason for Ms. Blanco discharge was the fact that she missed a number of full shifts and received warnings that her absences were a problem. However, the employer's evidence failed to establish that any but one of the absences of a full day should be considered unexcused. The absences were all for reasonable causes and were, with one exception, properly reported to the employer. Only the absence of July 24, 2003 would be considered unexcused as it was not timely reported. Between April and August of 2003, Ms. Blanco accumulated six occasions of tardiness. However, there was substantial improvement in her tardiness during calendar year 2004. In 2004, she was late on January 21 but had not been late since August 6, 2003. After the January tardiness, she was not late again until August 9. The final tardiness was on September 17 and was due to an unforeseen problem, a flat tire.

Because all of Ms. Blanco's absences of a full day are considered by the administrative law judge to be excused, only her tardiness is considered unexcused. Excused absences may not

form the basis of a misconduct disqualification, regardless of how excessive. Given the substantial improvement in Ms. Blanco's tardiness in 2004 and the time span between incidents, the administrative law judge concludes that the tardiness identified herein is not sufficient to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated October 1, 2004, reference 01, is hereby affirmed. Ms. Blanco was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf