

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BROOK L CHURCH**  
Claimant

**APPEAL NO: 10A-UI-05988-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 11/08/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated April 13, 2010, reference 02, that held the claimant was not discharged for misconduct on February 18, 2010, and benefits are allowed. A telephone hearing was held on June 9, 2010. The claimant participated. Scott McKenzie, Unemployment Specialist, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began working a long-term assignment at Farley & Sathers in Creston, Iowa on December 15, 2009. The claimant was placed on a three-month probationary period. The claimant received the employer policies and procedures. She knew to report any absences from work to both her employer and Farley & Sathers.

The claimant received a written warning for absences on February 5, 2010. The claimant missed work due to an out-of-town funeral on January 12, and failed to report an absence to the employer on January 20. The claimant lost her timecard, had an issue with getting a replacement that made it appear she did not work as scheduled on January 26/27.

An employer representative called claimant on February 19, 2010 stating her employment assignment was terminated due to performance issues. The claimant denies she was absent or late after the February 5 warning.

**REASONING AND CONCLUSIONS OF LAW:**

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

The administrative law judge concludes that the employer failed to establish the claimant was discharged for any current act or misconduct and/or excessive unexcused absenteeism on February 19, 2010.

The claimant was discharged for performance issues, and the employer did not issue any warning or discipline on this matter. The claimant was not excessively absent for inexcusable reasons, and she provided an explanation about her losing her timecard affected the proper recording of the period she worked on January 26/27. The employer could not establish the claimant was late on February (alleged most recent incident), and the claimant denies it.

**DECISION:**

The department decision dated April 13, 2010, reference 02, is affirmed. The claimant was not discharged for any current act and/or misconduct on February 19, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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