

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GUSTAF R CARLSON
Claimant

APPEAL NO. 09A-UI-06187-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON INDUSTRIAL SERVICES
Employer

**Original Claim: 03/01/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Gustaf Carlson filed an appeal from a representative's decision dated April 7, 2009, reference 03, which denied benefits based on his separation from Jacobson Industrial Services (Jacobson). After due notice was issued, a hearing was held by telephone on May 18, 2009. Mr. Carlson participated personally. The employer participated by Elizabeth Jerome, Account Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

The first issue in this matter is whether Mr. Carlson's appeal should be considered timely filed. If it is, then the issue becomes whether he was separated from employment for any disqualifying reason.

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: The representative's decision that is the subject of his appeal was mailed to Mr. Carlson at his address of record on April 7, 2009. He did not receive the decision until the evening of April 17. He filed an appeal at his local Workforce Development office on April 20, 2009.

Mr. Carlson began working for Jacobson on February 28, 2007 and worked full time as a forklift operator. He notified his supervisor on June 5, 2007 that he needed to serve two days of jail time. He was given permission to have June 6 off. He was to call the supervisor when he was released on June 7. He was released from jail the evening of June 7 and called the supervisor. Mr. Carlson worked the full day on June 8 before being discharged. The employer has a known company rule that one unreported absence will result in termination.

REASONING AND CONCLUSIONS OF LAW:

Mr. Carlson had ten days in which to appeal the April 7, 2009 decision disqualifying him from receiving benefits. Iowa Code section 96.6(2). He did not receive the decision until the evening of April 17. He did not have a meaningful opportunity to file his appeal by the April 17, 2009 due date. Therefore, the appeal he filed at his local office on April 20, 2009 shall be deemed timely filed. As such, the administrative law judge has jurisdiction over the separation issue.

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 benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Mr. Carlson was absent on June 7 because he was in jail. Absences caused by matters of personal responsibility, such as incarceration, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Carlson did not have any warnings about his attendance. He put his supervisor on notice that he might be absent on June 7, depending on when he was released from jail. Under these circumstances, the administrative law judge concludes that his one unexcused absence is not sufficient to establish excessive unexcused absenteeism within the meaning of the law. It was well within the employer's prerogative to discharge Mr. Carlson pursuant to its policy. However, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated April 7, 2009, reference 03, is hereby reversed. Mr. Carlson was discharged by Jacobson, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw