

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN L ALBRANT
Claimant

APPEAL NO. 10A-UI-06206-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICIES INC
Employer

**Original Claim: 12/27/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated April 16, 2010, reference 07, that held the claimant was not discharged for misconduct on March 24, 2010, and that allowed benefits. A telephone hearing was held on June 9, 2010. The claimant participated. Scott McKenzie, Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant worked as a full-time machine operator at Eaton Hydraulics from December 17, 2009 to March 25, 2010. The claimant received the employer's attendance policy, which requires him to notify the client and the employer about any absence from work. The employer's attendance policy provides for progressive discipline from verbal counseling for three (unexcused) absences or tardiness to a final written warning (or termination) for six absences or tardiness.

The claimant was verbally warned for absences on March 2, 9, and 25. The claimant was late to work on March 2 due to weather, and he was absent on the other days due to illness. The claimant did call Eaton to report his absences, but he did not contact the employer. Eaton advised the employer to terminate the claimant's assignment due to absenteeism, and the employer complied on March 26. The employer did not discharge the claimant.

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(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.

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.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on March 26, 2010, because the claimant's properly reported absences due to illness do not constitute excessive "unexcused" absenteeism.

The employer failed to follow its progressive disciplinary policy that provides for up to six absences or tardiness with a written warning for excessive absenteeism to be considered misconduct to the point of termination. The employer acknowledges it did not discharge the claimant, but terminated his assignment at the request of its client.

DECISION:

The representative's decision dated April 16, 2010, reference 07, is affirmed. The claimant was not discharged for misconduct in connection with employment on March 26, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw