

**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**

**BILLY L BRANCH
825 COLORADO ST
WATERLOO IA 50703**

**RENTOWN IV INC
2062 LOGAN AVE
WATERLOO IA 50703**

**RICHARD BETTERTON
ATTORNEY AT LAW
PO BOX 666
CEDAR FALLS IA 50613**

**Appeal Number: 04A-UI-03624-CT
OC: 03/07/04 R: 03
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:

Rentown IV, Inc. filed an appeal from a representative's decision dated March 25, 2004, reference 02, which held that no disqualification would be imposed regarding Billy Branch's separation from employment. After due notice was issued, a hearing was held by telephone on April 28, 2004. Mr. Branch participated personally. The employer participated by John Maitland, Owner, and was represented by Richard Betterton, Attorney at Law. Exhibit One was 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: Mr. Branch was employed by Rentown IV, Inc. from September 8, 2003 until February 17, 2004 as an on-call delivery person. He was discharged from the employment. One of the reasons for the discharge was the fact that the employer found him to be insubordinate on February 6 when he indicated he did not have to take direction from the owner of the company, only those working under the owner. Mr. Branch was allowed to continue in the employment in spite of this statement.

Also on February 6, Mr. Branch and a coworker delivered a dryer to a customer but it would not work. Mr. Branch believed the problem was due to a faulty fuse and, therefore, took the customer's fuse and went to try to find one to purchase. When he did not return to the home, the customer contacted the employer. When the employer spoke to Mr. Branch, he still had the customer's fuse in his pocket. He was not authorized to perform any electrical work for the customer. Mr. Branch had also told the employer on February 6 that he did not want to work a full day. However, he did, in fact, work the entire shift. He made a similar statement on February 16 but did work the full shift. When he called about work on February 17, he was notified of his discharge. Mr. Branch was 15 minutes late reporting for work on February 12. The employer did not document any other occasions of tardiness.

On February 13, Mr. Branch and a coworker damaged a television they delivered. Mr. Branch suggested to the customer that perhaps the employer would give him a discount because of the damage. There was an occasion on which Mr. Branch spoke to the secretary when delivery tickets were not done when he was ready to make deliveries. He told her that she should have had her job done on time. The employer also alleged that Mr. Branch was attempting to sell his personal items to customers. He attempted to sell a big screen television to one of the employer's customers on January 8. The employer was immediately made aware of the conduct. Mr. Branch did attempt to sell personal items on two other occasions, but only after the customer had indicated an intent not to purchase from Rentown IV, Inc.

Mr. Branch had not received any written warnings about any matters during the course of his employment. He had not been advised that he was in danger of losing his job.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Branch 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons which follow, it is concluded that the employer has failed to satisfy its burden of proof. Although Mr. Branch told the employer on occasion that he did not want to work, he did complete the workday. The employer only established one instance of tardiness, not a pattern of failing to report to work timely. In spite of having told the owner that he did not have to listen to his directives, he was allowed to continue in the employment an additional 11 days. Mr. Branch may have used poor judgment in taking the customer's fuse. However, he was attempting to remedy a problem associated with the appliance he had just delivered. His statement to the secretary was not so outrageous as to constitute an act of misconduct. It was not totally out of line for Mr. Branch to suggest to the customer that he request a discount from the employer due to receiving a damaged television. His statement might be viewed by some as attempting to maintain a good

customer relationship. The employer testified that Mr. Branch attempted to sell a personal television while at work on January 8. He did use poor judgment in attempting to sell personal items on two other occasions. However, his efforts did not impact the employer as the individuals had already decided not to purchase from the employer.

The employer's evidence establishes that Mr. Branch was an unsatisfactory employee. However, it does not establish a wanton or willful disregard for the employer's standards and interests. Moreover, the employer never put him on notice that he was engaging in conduct which might cause him to be discharged. 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, it is concluded that disqualifying misconduct has not been established by the evidence. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 25, 2004, reference 02, is hereby affirmed. Mr. Branch was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf