

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

ANDREW MARO  
263 RAVEN AVE  
ACKLEY IA 50601-8560

COUNTYLINE ENGINEERING INC  
824 BROOKS RD  
IOWA FALLS IA 50126

Appeal Number: 06O-UI-07480-CT  
OC: 04/16/06 R: 02  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Andrew Maro filed an appeal from a representative's decision dated May 12, 2006, reference 02, which denied benefits based on his separation from Countyline Engineering, Inc. After due notice was issued, a hearing was held by telephone on June 7, 2006. The June 12, 2006 decision of the administrative law judge affirmed the disqualification. Mr. Maro filed a further appeal with the Employment Appeal Board which, on July 21, 2006, remanded the matter for a new hearing because the recording of the prior hearing could not be transcribed.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on August 10, 2006. Mr. Maro participated personally and offered additional testimony from

Jennifer Sorenson. The employer participated by Jean Thompson, General Manager. Exhibits One and Two were admitted on the employer's behalf.

#### 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: Mr. Maro was employed by Countyline Engineering, Inc. from March 21, 2005 until April 17, 2006 as a full-time painter. He was discharged because of his attendance.

On January 13, 2006, Mr. Maro was arrested at work and confined to jail. He missed three days of work as a result of the arrest. He was absent on April 12 for personal reasons. Mr. Maro received warnings concerning his attendance. On April 13, he left for lunch and called to report that he would not be back for the remainder of his shift because he was taking his wife to the doctor. He was told he would need to bring in a doctor's excuse. Mr. Maro returned to work on April 14 but did not have a doctor's note. He was sent home and told to return when he had a note confirming his wife's doctor's visit of April 13. He was also suspended for three days. When he returned to work after the suspension, he still did not have the doctor's note. As a result, he was discharged. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Maro 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 benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Mr. Maro had three unexcused absences caused by his incarceration in January of 2006. The absences are unexcused because they were due to a personal matter. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Maro was also absent for personal reasons on April 12 and, therefore, the absence is unexcused. He had received warnings about his attendance and knew that his continued employment was in jeopardy because of his attendance.

In spite of the warnings, Mr. Maro failed to provide a doctor's statement to verify that he had taken his wife to the doctor on April 13. Given his attendance history, it was not unreasonable for the employer to request proof of the doctor's visit. Even if he did not know on April 13 that the employer wanted a doctor's statement, Mr. Maro certainly knew on April 14 that one was needed. He could have preserved his employment by simply providing the proof requested by the employer. If he had, in fact, taken his wife to the doctor, it should not have been a problem to have the doctor provide the requested proof. Given Mr. Maro's failure to make any attempt to provide the doctor's statement, the administrative law judge concludes that the absence is unexcused.

Mr. Maro had five periods of unexcused absenteeism during a period of approximately three months, January 13 through April 13, 2006. The administrative law judge considers this excessive. Mr. Maro had been warned about his attendance but failed to take those steps

necessary to conform his attendance to the employer's expectations. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 12, 2006, reference 02, is hereby affirmed. Mr. Maro was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs