

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON E O'SHAUGHNESSY
Claimant

APPEAL NO. 09A-UI-06583-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YELLOW BOOK USA INC
Employer

**Original Claim: 03/15/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brandon E. O'Shaughnessy filed a timely appeal from an unemployment insurance decision dated April 20, 2009, reference 02, that disqualified him for benefits. After due notice was issued, a telephone hearing was held May 28, 2009, with Mr. O'Shaughnessy participating. Corporate Human Resources Manager Christie Dalecky and Customer Service Manager Brad Crawford participated for the employer, Yellow Book USA, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Brandon E. O'Shaughnessy was employed by Yellow Book USA, Inc. from March 12, 2007, until he was discharged March 17, 2009. He last worked as a customer service inquiry representative.

Mr. O'Shaughnessy was tardy on Monday, March 16, 2009. On the prior Friday, March 13, 2009, he had received a final written warning for attendance. The March 13 warning covered the period February 23, 2009, through March 10, 2009. During that period of time, Mr. O'Shaughnessy was late on five occasions. He was absent twice without contact and absent for a portion of another day because of personal reasons. He was absent one other time during that period but was allowed to make up his hours.

Prior to March 13, 2009, Mr. O'Shaughnessy has received three previous written warnings because of tardiness and absences.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Although absences due to illness and other excusable reasons are not automatically acts of misconduct, absence and tardiness due to matters of personal responsibility, such as childcare, are considered to be unexcused whether or not the employee notifies the employer. See Higgins and Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984).

The evidence in this record establishes a pattern of unexcused absence and tardiness for matters of personal responsibility. The administrative law judge concludes that benefits must be withheld.

DECISION:

The unemployment insurance decision dated April 20, 2009, reference 02, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw