

**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**

**ROBERT A COLE JR
419½ ANKENY ST
WATERLOO IA 50703**

**BOSTON WINDOW CLEANING INC
THE MILLARD GROUP
c/o PERSONNEL PLANNERS INC
7301 N CICERO AVE
LINCOLNWOOD IL 60712**

**Appeal Number: 06A-UI-06951-CT
OC: 07/31/05 R: 03
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, 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:

Robert Cole filed an appeal from a representative's decision dated June 30, 2006, reference 01, which denied benefits based on his separation from Boston Window Cleaning, Inc. After due notice was issued, a hearing was held by telephone on July 24, 2006. Mr. Cole participated personally. The employer participated by Gary Kincaid, Area Manager, and was represented by Joseph McDonnell of Personnel Planners, Inc. Exhibits One through Six 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. Cole was employed by Boston Window Cleaning, Inc. from May 1, 2004 until June 2, 2006 as a full-time janitor. He was discharged because of his attendance.

Mr. Cole was absent without notice on August 25, 2005 and received a written warning on August 26. He told the employer he had taken medication that caused him to oversleep. Mr. Cole received another written warning on September 26 because he failed to give sufficient notice of his intent to be absent on September 23. Employees are required to give four hour's notice. Mr. Cole called at 3:00 p.m., the same time his shift started. On December 2, he gave only 15 minute's notice that he would be absent. As a result, he was suspended for three days.

Mr. Cole was absent without calling in on March 3, 6 and 7, 2006. The employer intended to discharge him as a result of the absences but, because Mr. Cole was being evicted from his home at the time, the employer decided to allow him to continue the employment. On May 31, the employer and the security guard spoke to Mr. Cole about removing pop cans from the workplace without proper authorization. Security wanted to make sure that items being removed in large garbage bags had been approved for removal by a supervisor and did not need to be checked by security. Mr. Cole was upset because of what security said to him. Therefore, he called on June 1 to report that he would not be at work. He did not have any other reason for being absent. As a result of the final absence of June 1, Mr. Cole was discharged on June 2. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cole 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. Cole had one unreported absence (August 26) and two untimely reported absences (September 23 and December 2) during 2005. He did not establish any good reason as to why he could not give more notice of his intended absences on September 23 and December 2. On one occasion, he called at the start of his shift and on the other, only 15 minutes before the start of his shift. The administrative law judge appreciates that it is not always possible to give four hour's notice that one is going to be absent. However, Mr. Cole could have tried to give at least 30 to 60 minute's notice. He was warned at least twice that his attendance was jeopardizing his continued employment. In spite of the warnings, he was absent for three days without any notice in March of 2006.

The employer gave Mr. Cole a second chance by not discharging him after the three unreported absences in March. However, he again disregarded the employer's standards on June 1, 2006. He had no reasonable cause for being absent. He remained off work because he was upset after the guard spoke to him about removing items from the workplace. It was not unreasonable for the security officer to ask him to obtain permission to remove large parcels

from the workplace. The officer was not accusing Mr. Cole of theft. He was only asking him to follow a set procedure so that security would know he had permission to remove the bag and would not have to perform a security check of the parcel. Mr. Cole's response in remaining off work because of the conversation with security was unreasonable.

Mr. Cole's absence of June 1 was unexcused as it was not for any reasonable cause. He had three unreported absences in March and one in August. All four absences are unexcused as they were not properly reported. He had two absences that were not timely reported in 2005 and, therefore, both are unexcused. Even if the administrative law judge did not consider the unreported absence of August 25 because it was due to oversleeping because of medication, there would still be six unexcused absences on Mr. Cole's record over a period of approximately eight months. The administrative law judge considers this excessive.

Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. Mr. Cole did not conform his standards to the employer's expectations in spite of warnings. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 30, 2006, reference 01, is hereby affirmed. Mr. Cole was discharged for disqualifying misconduct. 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/cs