

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

STEVEN V WISHNOWSKI
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CCB PACKAGING INC
PO BOX 220
HIAWATHA IA 52233

Appeal Number: 04A-UI-06028-H2T
OC 05-02-04 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/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 21, 2004, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on June 22, 2004. The claimant did participate. The employer did participate through Michelle Philpot, Human Resources Manager, and Rod Hanssen, Distribution Manager (representative).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a forklift driver full time beginning September 23, 1997 through June 25, 2003 when he was discharged. The claimant called in to his employer on June 25, 2003 to report that he would not be at work that day because he was having personal problems with his wife. The employer's records indicate that the claimant called in sick on June 25, 2003.

The claimant was a no-call/no-show for work on June 26, 2003 and June 27, 2003. His supervisor told the claimant on June 25, 2003 that if he was not going to come in that day, then he was discharged. Since the claimant believed he had been discharged on June 25, 2003 he did not call in again or show up for work again. The claimant had last been warned that his job was in jeopardy on June 9, 2002. The employer cannot establish any unexcused absences between June 9, 2002 and June 25, 2003 when the claimant was discharged for excessive unexcused absenteeism. The final absence occurred on June 25, 2003 when the claimant called in for personal reasons. The claimant had no other instances of absenteeism or warnings within the last year between June 9, 2002 and June 25, 2003.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

A failure to report to work without notification to the employer is considered an unexcused absence. One unexcused absence within a one-year period not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The May 21, 2004, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/b