

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAROLD E WHITE
Claimant

APPEAL NO. 09A-UI-16461-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENVENTURES INC
Employer

**Original Claim: 10/04/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Harold White filed an appeal from a representative's decision dated October 26, 2009, reference 02, which denied benefits based on his separation from Genventures, Inc. After due notice was issued, a hearing was held by telephone on December 8, 2009. Mr. White participated personally. The employer participated by Tony Bennett, General Manager, and Tom Heise, Plant Manager.

ISSUE:

At issue in this matter is whether Mr. White was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. White began working for Genventures, Inc. on February 26, 2009 as a full-time soil sorter. He worked for the company through a temporary placement service before being hired. His last day of work was September 17.

The employer requires that intended absences be reported at least 30 minutes prior to the start of the work shift. Mr. White did not call or report for work on September 18. He called after the start of his shift on September 21 and again on September 22 to report that he would be absent. He indicated on September 21 that his back was bothering him and he would be seeing a doctor. The plant manager told him at that time that he needed to straighten out his attendance issues. Mr. White went in on September 23 and was told to return the following day. He no longer had employment effective September 23, 2009.

Mr. White missed a total of ten days during the course of his employment. Some of the absences were for medical reason relating to his back and injuries sustained in a car accident. He also missed time from work to take his child to school, to attend to a family matter out of town, and because his car would not start. He had been verbally warned about his attendance in June and August. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer initiated Mr. White's separation from employment when he was not allowed to return to work following his absence of September 22. Although he reported his absences late, the fact that he maintained contact with the employer during the absence establishes that he did not intend to sever the employment relationship. For the above reasons, the separation is a discharge. 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 benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. White had three consecutive unexcused absences beginning September 18, when he failed to notify the employer that he would not be at work. He then failed to give timely notice of his intent to be absent on September 21. He had already been warned about his attendance in June and August. The plant manager told him on September 21 that he needed to straighten out his attendance issues. In spite of the various warnings, Mr. White again failed to give timely notice of his absence on September 22. The administrative law judge considers three consecutive unexcused absences following warnings to be excessive. Excessive unexcused absenteeism constitutes a substantial disregard for the employer's standards and is, therefore, misconduct within the meaning of the law. As such, benefits are denied.

DECISION:

The representative's decision dated October 26, 2009, reference 02, is hereby affirmed. Mr. White was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw