

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN C TETTER**  
Claimant

**APPEAL NO. 08A-UI-09926-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARH INC – EMPLOYMENT SOURCE**  
Employer

**OC: 09/14/06 R: 04**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

ARH, Inc. filed an appeal from a representative's decision dated October 20, 2008, reference 01, which held that no disqualification would be imposed regarding Steven Tetter's separation from employment. After due notice was issued, a hearing was held by telephone on November 12, 2008. The employer participated by Samantha Frerichs, Human Resources Consultant. Mr. Tetter did not respond to the notice of hearing.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Tetter was last employed by ARH, Inc. from May 3 until July 20, 2007. He was hired to work full time on an assignment with Duck Creek Tire. He was discharged because of his attendance.

Mr. Tetter received a written warning on June 13 because he had been late reporting to work on five occasions. The decision to discharge him was based on the fact that he was 35 minutes late for work on July 20. Attendance was the sole reason for the separation.

Mr. Tetter filed a claim for job insurance benefits effective September 14, 2008. He has received a total of \$1,112.00 in benefits since filing the claim.

**REASONING AND CONCLUSIONS OF LAW:**

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. Tardiness in reporting to work is considered a limited absence from work.

Mr. Tetter was late reporting to work on six separate occasions during a period slightly in excess of two months. The administrative law judge considers this excessive. Mr. Tetter did not participate in the hearing to offer any reasonable cause for the repeated tardiness. He had been warned about his tardiness. In spite of the warning, he did not take those steps necessary to ensure his timely arrival at work. 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 and benefits are denied.

Mr. Tetter has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Tetter will be required to repay benefits already received.

**DECISION:**

The representative's decision dated October 20, 2008, reference 01, is hereby reversed. Mr. Tetter 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. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Tetter will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css