

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**USBALDO H CORTEZ**  
Claimant

**APPEAL NO. 07A-UI-03137-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 02/25/07 R: 01  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Beef Products, Inc. (BPI) filed an appeal from a representative's decision dated March 23, 2007, reference 03, which held that no disqualification would be imposed regarding Usbaldo Cortez' separation from employment. After due notice was issued, a hearing was held by telephone on April 12, 2007. The employer participated by Wendy Steemken, Assistant Human Resources/Safety Manager. Mr. Cortez did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Cortez 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. Cortez was employed by BPI from June 26, 2006 until February 23, 2007 as a full-time production worker. He was discharged because of his attendance.

Mr. Cortez was absent without notice on August 13, 2006. He was late for unknown reasons on September 9. He reported the intent to be absent on February 10 because of personal business. He received warnings about his attendance on August 13 and September 9. Mr. Cortez was suspended for three days on November 25 due to his attendance. The final warning was given on February 10. The decision to discharge was based on the fact that Mr. Cortez was 17 minutes late on February 23 because he was "running late." Attendance was the sole reason for the discharge.

Mr. Cortez filed a claim for job insurance benefits effective February 25, 2007. He has received a total of \$334.00 in benefits since filing his 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. Cortez' "no call/no show" of August 13 is an unexcused absence because it was not properly reported. His tardiness of September 9 is unexcused as the evidence does not establish any reasonable cause for it. His absence of February 10 is unexcused as it was for personal business. Absences caused by matters of personal responsibility are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The tardiness of February 23 is unexcused as there were no reasonable grounds for being late. His statement that he was "running late" suggests that he had overslept, which is not reasonable grounds for missing time from work.

Mr. Cortez' four unexcused absences occurred during a period of approximately six months. The administrative law judge considers this excessive. He had received warnings about his attendance but failed to conform his attendance to the employer's standards. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, it is concluded the disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Cortez has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated March 23, 2007, reference 03, is hereby reversed. Mr. Cortez 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. Mr. Cortez has been overpaid \$334.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs