

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GUADALUPE DIAZ
Claimant

APPEAL NO. 06A-UI-09560-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ
Employer

**OC: 08/27/06 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Alaniz filed an appeal from a representative's decision dated September 19, 2006, reference 01, which held that no disqualification would be imposed regarding Guadalupe Diaz' separation from employment. After due notice was issued, a hearing was held by telephone on October 11, 2006. The employer participated by Kristy Ensminger, Human Resources Manager; Julie Blind, Laser Supervisor; and Rodney Stewart, Production Manager. Exhibits One through Four were admitted on the employer's behalf. Mr. Diaz did not respond to the notice of hearing.

ISSUE:

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

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. Diaz began working for Alaniz on March 31, 2005 as a full-time machine operator. He was discharged on August 2, 2006 because of his attendance. The employer instituted a new attendance policy on May 1, 2006. All employees were given a "clean slate."

Mr. Diaz was late reporting to work on three occasions in May, two occasions in June, and two occasions in July. His tardiness ranged from ten minutes to three hours. He was late on some occasions because he had to perform community service. The employer notified him that missing work for this reason was unacceptable. Mr. Diaz was absent from work for unknown reasons on May 13 and June 10. He received verbal warnings about his attendance on May 19 and August 1.

The incident that prompted the discharge occurred on August 2. Mr. Diaz called to report that he would be two hours late for his shift. However, he did not report for his shift or re-contact the employer concerning his intentions. The supervisor saw him at the workplace after his shift was

over and Mr. Diaz indicated he had missed work because he was sitting in a chair watching television. The absence of August 2 caused Mr. Diaz to exceed the allowable attendance points and, therefore, he was discharged. Attendance was the sole reason for the discharge.

Mr. Diaz filed a claim for job insurance benefits effective August 27, 2006. He has received a total of \$1,464.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

Mr. Diaz was discharged from his employment with Alaniz. 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 is considered a limited absence from work.

The attendance record that caused Mr. Diaz' discharge was only for the period beginning May 1, 2006. During that period, he had seven occasions of tardiness. The tardiness was not by mere minutes but, in most cases, by an hour or more. In spite of receiving a verbal warning about his attendance on August 1, Mr. Diaz was absent on August 2 without proper notice and without reasonable cause. Although he called to report that he would be two hours late, he did not re-contact the employer to report that he would not be there for any portion of his shift. Moreover, the only reason he gave the employer for missing work was that he was watching television. This does not constitute reasonable cause for missing work. While Mr. Diaz did mention getting a doctor's excuse for August 2, he did not indicate that his absence was due to illness.

The administrative law judge concludes that Mr. Diaz' seven occasions of tardiness and his unexcused absence of August 2 are sufficient to establish excessive unexcused absenteeism, which is 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. Diaz 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 September 19, 2006, reference 01, is hereby reversed. Mr. Diaz 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. Diaz has been overpaid \$1,464.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs