

from July 15, 2002 until September 15, 2005 as a full-time batch maker. He was discharged because of his attendance. An individual is subject to discharge if he is absent three or more times or late four or more times during a calendar quarter.

Mr. McClain was absent on September 6, 2005 because of a sick child and on September 14 because of his own illness. Both absences were timely reported. He was 43 minutes late on August 23; 53 minutes late on September 1; and almost two hours late on September 2. On August 30, he was scheduled to be at work at 7:00 a.m. but did not report until 6:26 p.m. All of his tardiness was due to transportation issues. Mr. McClain was warned about his attendance on August 31 and September 7. He was told on September 7 that he would be discharged if he was absent or late again. Attendance was the sole reason for Mr. McClain's September 15, 2005 discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. McClain was separated from employment for any disqualifying reason. 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. Absences that are for reasonable cause and are properly reported are considered excused absences. There must be a current act of unexcused absenteeism to sustain a disqualification from job insurance benefits.

All four of the occasions of tardiness identified herein are considered unexcused as they were not for reasonable cause. Absences from work due to matters of purely personal responsibility, such as transportation, are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). However, Mr. McClain's last unexcused absence was on September 2 when he was almost two hours late for work. The absence that triggered the decision to discharge was on September 14 and was due to Mr. McClain's own illness. Because the absence was for reasonable cause and was properly reported, it is considered excused. The unexcused absence of September 2 was almost two weeks before the discharge. Therefore, the absence was too remote in time to be considered a current act of misconduct. Accordingly, the administrative law judge concludes that Mr. McClain's discharge was not due to a current act of misconduct. As such, no disqualification is imposed.

There is no dispute of the employer's right to discharge Mr. McClain. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated October 6, 2005, reference 01, is hereby reversed. Mr. McClain was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs