

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK H THOMPSON
Claimant

APPEAL NO: 06A-UI-08552-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUIK STOP OIL CHANGE
Employer

OC: 07/09/06 R: 04
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Quik Stop Oil Change filed an appeal from a representative's decision dated August 25, 2006, reference 02, which held that no disqualification would be imposed regarding Mark Thompson's separation from employment. After due notice was issued, a hearing was held by telephone on September 12, 2006. Mr. Thompson participated personally and Exhibit A was admitted on his behalf. The employer participated by Douglas Chinlund, Owner.

ISSUE:

At issue in this matter is whether Mr. Thompson 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. Thompson was employed by Quik Stop Oil Change from July of 2005 until April 17, 2006 as a full-time lube technician. He was discharged because of his attendance.

Mr. Thompson left work early on a number of occasions but never without first obtaining permission to do so. On some occasions, he made arrangements for another employee to cover the remainder of his shift. Mr. Thompson was approximately 30 minutes late reporting for work on January 3 and March 6. The tardiness was caused either by oversleeping or car trouble. Mr. Thompson was absent due to illness on four occasions in 2006. The final absence that caused his discharge was on April 15 when he called in sick.

Mr. Thompson was never warned either in writing or verbally that his attendance was a problem and might lead to his discharge. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. Thompson was discharged from his employment. 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.

The occasions on which Mr. Thompson left work early are excused absences as they were with the permission of his supervisor. The supervisor could have denied permission to leave early but chose not to do so. The absences caused by illness are also excused as they were for reasonable cause and there was no evidence that they were not properly reported. The two occasions on which Mr. Thompson was late represent unexcused absenteeism as they were due to oversleeping and car trouble. However, the last such occasion was on March 6, at least five weeks before his discharge. A disqualification from job insurance benefits must be based on a current act of misconduct. See 871 IAC 24.32(8). The final act of tardiness on March 6 was not a current act in relation to the April 17 discharge date.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish a current act of misconduct. Moreover, Mr. Thompson was never warned that he was engaging in conduct that might lead to his discharge. While the employer may have had good cause to discharge, 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 August 25, 2006, reference 02, is hereby affirmed. Mr. Thompson was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs