

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**BRICE L HIPPEN  
644 – 275<sup>TH</sup> AVE  
LITTLE YORK IL 61453-9820**

**WINEGARD COMPANY  
c/o TALX CORPORATION  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 06A-UI-05397-CT  
OC: 04/30/06 R: 04  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Winegard Company filed an appeal from a representative's decision dated May 15, 2006, reference 01, which held that no disqualification would be imposed regarding Brice Hippen's separation from employment. After due notice was issued, a hearing was held by telephone on June 9, 2006. Mr. Hippen participated personally. The employer participated by Danny Brauns, Warehouse Team Leader. Exhibits One through Four were admitted on the employer's behalf.

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. Hippen was employed by Winegard Company

from June 7, 2004 until April 24, 2006 as a full-time dock loader. He was discharged because of his attendance. An individual is subject to discharge if he has five attendance violations within a 12-month period.

Mr. Hippen was absent on May 31, October 31, November 19, and December 12, 2005 for unknown reasons. On February 16, 2006, he called to report that he would be absent because of road conditions. He lived approximately 45 miles from work and the roads were snow and ice covered. As a result of the absence he received a written warning. Mr. Hippen was absent due to illness on March 2, 2006 and provided a doctor's statement when one was requested. The decision to discharge was based on the fact that Mr. Hippen was two hours late on April 24, 2006. He was late because he had a flat tire on the way to work. He was discharged the same day. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Hippen 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. Properly reported absences that are for reasonable cause are considered excused absences.

The evidence of record does not disclose the reason for Mr. Hippen's absences in 2005. Without knowing the reason for the absences, the administrative law judge cannot conclude they were unexcused. The absence of February 16, 2006 is excused as it was due to matters beyond Mr. Hippen's control, the weather and resulting road conditions. The absence of March 2, 2006 is excused as it was due to illness and was properly reported. The final absence that prompted the discharge was due to Mr. Hippen having a flat tire on the way to work and arriving late. The flat tire was an unexpected event that he could not have guarded against. Moreover, he did not have a history of missing time from work due to transportation issues. Even if the administrative law judge were to conclude that the tardiness of April 24 should be unexcused, it would be the only period of unexcused absenteeism of record. The administrative law judge would not consider the one unexcused absence of April 24 to be sufficient to establish excessive unexcused absenteeism within the meaning of the law.

While the employer may have had good cause to discharge Mr. Hippen, 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 cited herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated May 15, 2006, reference 01, is hereby affirmed. Mr. Hippen was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs