

**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**

**SABRINA J CARPENTER  
1001 – 12<sup>TH</sup> ST  
DES MOINES IA 50316**

**UNITED PARCEL SERVICE  
C/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-00994-CT  
OC: 03/09/03 R: 02  
Claimant: Respondent (2)**

**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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

United Parcel Service (UPS) filed an appeal from a representative's decision dated January 21, 2004, reference 06, which held that no disqualification would be imposed regarding Sabrina Carpenter's separation from employment. After due notice was issued, a hearing was held by telephone on February 27, 2004. Ms. Carpenter participated personally. The employer participated by Joni Medhus, Manager; Kevin O'Neal, Supervisor; and Kimberly McKee, Human Resources Supervisor.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Carpenter was employed by UPS from April 29 until December 1, 2003 as a part-time employee handling air cargo. She was discharged on December 19 because of her attendance. She could have continued working during the ten-day grievance period but chose not to file a grievance concerning her discharge.

Ms. Carpenter was late on June 27, July 16, July 18, and July 19. She received a written warning concerning her attendance on July 21. She was then late seven times in August, one time in September, and four times in November. She was late on December 3 and December 11. Ms. Carpenter was absent for unknown reasons on December 13. The decision to discharge was based on the fact that she called on December 17 to report that she would be absent because she was taking someone's child to a doctor's appointment. She was notified of her discharge on December 19. Attendance was the sole reason for the discharge.

Ms. Carpenter has received a total of \$896.00 in job insurance benefits since filing her additional claim effective December 21, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Carpenter 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 in connection with the employment. The employer had the burden of proving disqualifying job 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 job insurance benefits if she was excessively absent on an unexcused basis. Tardiness in reporting to work is considered a limited absence from work. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Ms. Carpenter had a chronic problem with tardiness. She had been late four times before receiving a written warning on July 21. She knew from the warning that her attendance was unsatisfactory and might lead to her discharge. In spite of the warning, she was late an additional 14 times prior to her discharge, the last of which was on December 11. The decision to discharge was based on a current unexcused absence of December 17 when Ms. Carpenter reported that she would be absent to take someone's child to a doctor's appointment.

Ms. Carpenter's lack of regard for punctuality is evidenced by the fact that she was not at home at the scheduled time of the unemployment hearing and did not make contact until 20 minutes after the hearing was to start. She was employed with UPS for approximately 8 months. The administrative law judge considers 18 occasions of tardiness during 8 months to be excessive. The evidence does not establish any justification for the repeated tardiness. Ms. Carpenter indicated that the bulk of the tardiness was by only a few minutes. She also indicated that the tardiness was due to the effects of medication. If she was having difficulty sleeping or getting up because of medication, one would expect her tardiness to be by more than a few minutes. Moreover, she did not start taking medication until November. She had already accumulated 12 occasions of tardiness before that point.

For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied. Ms. Carpenter has received benefits since filing her additional 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 January 21, 2004, reference 06, is hereby reversed. Ms. Carpenter was discharged by UPS for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Carpenter has been overpaid \$896.00 in job insurance benefits.

cfc/b