

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY M BARNES
Claimant

APPEAL NO. 08A-UI-10410-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAGCRAFTPAPERCON II
Employer

**OC: 10/05/08 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bagcraftpapercon II filed an appeal from a representative's decision dated October 28, 2008, reference 01, which held that no disqualification would be imposed regarding Cody Barnes' separation from employment. After due notice was issued, a hearing was held by telephone on November 20, 2008. The employer participated by Jay Walker, Operations Manager. Mr. Barnes did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Barnes was employed by Bagcraftpapercon II from July 8 until October 1, 2008. He was hired to work full time as a press operator. He was discharged due to unacceptable attendance. The final event that prompted his discharge occurred on October 1. He timely reported his intention to be absent due to an ankle injury.

Mr. Barnes was nine minutes late reporting for work on July 16. He received attendance points on August 13 and September 3 because he refused to work mandatory overtime. He was absent due to illness on September 5. Mr. Barnes had not received any written warnings about his attendance but was kept informed as to his point status and the number of points that might result in his discharge.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge is not bound by an employer's designation of an absence as "unexcused." Moreover, there must be a current act of unexcused absenteeism to support a disqualification from benefits. See 871 IAC 24.32(8).

Mr. Barnes's absence of October 1 is excused, as it was due to reasonable cause, an injury, and was timely reported to the employer. His absence of September 5 is likewise excused. The last absence that might be considered unexcused was that of September 3, when Mr. Barnes refused to work overtime. However, an unexcused absence that occurred on September 3 would not constitute a current act in relation to the discharge that occurred almost one month later on October 1.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish a current act of misconduct. 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). Because there was no current act that constituted misconduct within the meaning of the law, no disqualification may be imposed.

DECISION:

The representative's decision dated October 28, 2008, reference 01, is hereby affirmed. Mr. Barnes was discharged, but a current act of 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/kjw