

**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**

**HUGO N RAMIREZ  
8022 CRESTVIEW DR  
DES MOINES IA 50320**

**TITAN TIRE CORPORATION  
2345 E MARKET ST  
DES MOINES IA 50317**

**Appeal Number: 04A-UI-12168-CT  
OC: 10/17/04 R: 02  
Claimant: Appellant (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:

Hugo Ramirez filed an appeal from a representative's decision dated November 3, 2004, reference 01, which denied benefits based on his separation from Titan Tire Corporation (Titan). After due notice was issued, a hearing was held by telephone on December 16, 2004. Mr. Ramirez participated personally. The employer participated by Joyce Kain, Human Resources Manager.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Ramirez was employed by Titan from November 9, 1999 until October 18, 2004 as a full-time tire builder. He was discharged because of his attendance.

Mr. Ramirez returned to work on October 13 following a disciplinary suspension due to his attendance. He did not report for work on October 14 and did not give the required one-hour's notice of the intent to be absent. He called ten minutes before the start of his shift. Mr. Ramirez did not report for work or contact the employer on October 15. The absences of October 14 and 25 were due to illness. He was also scheduled to work overtime on October 16 and 17. He did not report or call on either day. The weekend work schedule was posted on the afternoon of August 13. Mr. Ramirez had been scheduled to work alternate weekends. He did not contact the employer to see if he was scheduled to work October 16 and 17.

Mr. Ramirez returned to work on October 18. He presented a doctor's excuse for October 14 and 15. Because he had been absent four consecutive shifts without proper notice, Mr. Ramirez was discharged. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Ramirez 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 job insurance benefits if he was excessively absent on an unexcused basis. Absences, which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Mr. Ramirez had just returned to work on October 13 because of a suspension imposed due to unsatisfactory attendance. Therefore, he should have known that further attendance problems could result in his discharge from Titan. Mr. Ramirez did not give timely notice of his intent to be absent on October 14 and did not give any notice of his absence of October 15. The administrative law judge does not believe the fact that he had a headache should have prevented him from calling the employer within the time frame required. Because Mr. Ramirez did not properly report the absences of October 14 and 15, they are considered unexcused even through they were for illness. Moreover, Mr. Ramirez did not work the overtime scheduled for October 16 and 17 and did not call to say he would be absent. Given the extent to which overtime was being worked, Mr. Ramirez should have called to find out if he was scheduled to work that weekend if the schedule had not been posted when he left work on October 13.

The administrative law judge concludes that Mr. Ramirez' four consecutive unexcused absences of October 14, 15, 16 and 17 are sufficient to establish misconduct, especially given the fact that they came immediately after his return from a suspension imposed because of his attendance. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated November 3, 2004, reference 01, is hereby affirmed. Mr. Ramirez was discharged by Titan for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs