

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYLER J CHAMBERLAIN**  
Claimant

**APPEAL NO. 07A-UI-04329-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN SPIRIT CORPORATION**  
Employer

**OC: 04/01/07 R: 02  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

American Spirit Corporation filed an appeal from a representative's decision dated April 20, 2007, reference 01, which held that no disqualification would be imposed regarding Tyler Chamberlain's separation from employment. After due notice was issued, a hearing was held by telephone on May 14, 2007. The employer participated by Dane Weeks, Human Resources Manager. Mr. Chamberlain did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Chamberlain 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. Chamberlain was employed by American Spirit Corporation from October 11, 2005 until April 3, 2007 as a full-time press helper. He was discharged because of his attendance. The final absence that prompted the discharge occurred on April 2 when Mr. Chamberlain called to report that he would be absent due to illness. His shift started at 7:00 a.m. and he called at 5:40 a.m. The employer requires two hours' notice of intended absences.

Mr. Chamberlain was late on February 23, October 12, October 27, and November 8, 2006. The tardiness ranged from one minute to six minutes. He was absent on 11 occasions in 2006. The absences were all due to either his own illness or that of a family member. He received a verbal warning regarding attendance on June 28 and a written warning on November 13, 2006.

Mr. Chamberlain was 30 minutes late on January 16, 2007, for unknown reasons. He was over two hours late on March 27 because his child was sick. He called one hour before the start of his shift to report the tardiness. His remaining absences in 2007 were due to illness. Mr. Chamberlain always called to report his absences but did not always give two hours' notice. His tardiness of March 27 and his absence of April 2 were the only ones for which he failed to give the required notice. Attendance was the sole reason for his April 3, 2007 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. There must be a current incident of unexcused absenteeism to support a disqualification from benefits. See 871 IAC 24.32(8).

Mr. Chamberlain was late on March 27 and absent on April 2, 2007. Both absences were for reasonable cause. The tardiness was due to a sick child and the absence was due to his own illness. It is true that he did not give two hours' notice on either occasion. He only gave one hour's notice on March 27 and one hour and 20 minute's notice on April 2. The administrative law judge concludes that he substantially complied with the employer's notice requirements. One hours' notice is reasonable, the employer's policy notwithstanding. Therefore, both periods of absence are excused absences within the meaning of the law.

Mr. Chamberlain's last period of unexcused absenteeism was on January 16, 2007, when he was 30 minutes late. However, an absence that occurred on January 16 would not constitute a current act of misconduct in relation to the April 3 discharge date. Inasmuch as a current act of misconduct has not been established, no disqualification is imposed. 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 April 20, 2007, reference 01, is hereby affirmed. Mr. Chamberlain 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