

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY A ABRAHAMSON
Claimant

APPEAL NO. 11A-UI-04826-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GORMAN ROOFING SERVICES INC
Employer

OC: 01/09/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Troy Abrahamson filed an appeal from a representative's decision dated March 30, 2011, reference 01, which denied benefits based on his separation from Gorman Roofing Services, Inc. (Gorman). After due notice was issued, a hearing was held by telephone on May 9, 2011. Mr. Abrahamson participated personally and offered additional testimony from Barb Hall, Department of Human Services Child Protective Worker. The employer participated by Tom Newton, Manager.

The hearing record was left open to allow Mr. Abrahamson to submit telephone records. He was to contact the administrative law judge as to how much time he would need to obtain such records. As of May 27, 2011, the administrative law judge has not heard from him. It was, therefore, presumed that he did not intend to submit telephone records. As such, the hearing record was closed.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Abrahamson began working for Gorman on June 28, 2010 as a full-time roofer. On the morning of February 16, 2011, he attended an OSHA meeting and was to return to the job site that afternoon. He did not report for work the afternoon of February 16 and did not contact the employer regarding his intentions. Mr. Abrahamson also failed to report for work or contact the employer on February 17 and 18. His foreman and job superintendent confirmed that he had not called to report the absences. The employer decided to discharge him and sent him a letter to this effect on February 21. He was aware of the employer's policy requiring that absences be reported in advance of the work shift.

In January and February of 2011, Mr. Abrahamson was experiencing family problems related to a separation from his wife and a dispute over custody of his children. The issues did not

prevent him from calling the employer. Attendance was the sole reason for the separation from Gorman.

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 § 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 benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Mr. Abrahamson was absent a portion of the day on February 16 and all day February 17 and 28 without notice to the employer. It was his contention that he did, in fact, notify the employer of his intent to be absent. Since this contention was contradicted by the employer's testimony, he was given the opportunity to provide phone records to establish the calls. The phone records would be the best evidence to establish whether or not the calls were made. Mr. Abrahamson was to notify the administrative law judge as to how much time he would need to obtain the records. He has not indicated that there was a problem and that the records could not be obtained. It is permissible to infer that the records were not submitted because they would not have been supportive of his position.

For the above reasons, it is concluded that the employer's testimony regarding the lack of contact on the dates at issue is credible. Mr. Abrahamson knew he was to report his absences. The fact that there were family issues at the time did not prevent him from calling. He did not indicate in his testimony that he could not call because of the legal matters. Because he did not do so, all three occasions are unexcused. Three consecutive unexcused absences are sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. As such, benefits are denied.

DECISION:

The representative's decision dated March 30, 2011, reference 01, is hereby affirmed. Mr. Abrahamson was discharged by Gorman for misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs