

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICKY J CARTER**  
Claimant

**APPEAL NO. 06A-UI-10675-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARKER COMPANY LTD**  
Employer

**OC: 01/22/06 R: 03  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ricky Carter filed an appeal from a representative's decision dated October 24, 2006, reference 01, which denied benefits based on his separation from Barker Company, Ltd. After due notice was issued, a hearing was held by telephone on November 20, 2006. Mr. Carter participated personally. The employer participated by Dick Dietzman, Plant Manager, and Gary Roberts, Supervisor. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Carter was employed by Barker Company, Ltd. from June 12, 2000 until September 8, 2006. He was last employed full-time in production assembly. He was discharged because of his attendance.

Mr. Carter was absent on several occasions in 2004 where he failed to call the employer before the start of his shift as required. In June of 2005, he received a written warning for not reporting his absences timely. Mr. Carter was approximately 30 minutes late for unknown reasons on April 15, 2005. He received a written warning on December 12, 2005 because he was absent without calling in on December 9.

Mr. Carter was absent because of a court date on March 3, 2006. He missed 1.5 hours on May 1 for personal reasons. He was absent on May 30 and was allowed to use vacation time to cover the day. The absence was not reported as one due to illness. He was also absent on July 20 and July 24 and was allowed to use vacation to cover both dates. Illness was not cited as the reason for the absence of July 20. The absence of July 24 was due to a water line breaking at Mr. Carter's home. Mr. Carter was approximately 15 minutes late on August 19. On September 1, he was given a written warning and placed on probation. He was advised that any time missed between September 5 and November 3, 2006 would result in his discharge.

The decision to discharge was based on the fact that Mr. Carter was late reporting for work on September 8. He was sitting in his vehicle with the windows rolled up and the radio on. The employer sounds two bells, two minutes apart, indicating the start of the shift. Mr. Carter heard what he thought was the first bell and proceeded to work. He forgot his lunch and had to return to the vehicle. The bell he heard was actually the second bell and, therefore, he was late reporting for work. He was from five to ten minutes late on September 8. Because the tardiness violated the terms of his probation, Mr. Carter was discharged on September 8, 2006.

#### **REASONING AND CONCLUSIONS OF LAW:**

Mr. Carter was discharged from employment. 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). Although there had been problems with Mr. Carter's production, the discharge was based solely on his attendance. During calendar year 2006, he was absent on six occasions for personal reasons before being placed on probation. These occasions include March 3, May 1, May 30, July 20, July 24, and August 19, 2006. Mr. Carter had been warned about his attendance and knew or should have known that his unsatisfactory attendance was jeopardizing his continued employment.

Mr. Carter was placed on probation on September 1. He was advised that any time missed during the probationary period would result in his discharge. In spite of the warning and the probation, Mr. Carter reported to work late on September 8, just one week into his probation. Because the employer uses bells to alert employees of the start of the shift, he did not have to guess at what time to go to work or rely on his own timepiece. Instead of listening for the warning bells, Mr. Carter was sitting in his vehicle with the windows up and the radio on. Because it was his responsibility to be aware of which bells were sounding, his tardiness of September 8 was not justified.

The administrative law judge concludes that the seven occasions of absence identified herein are all unexcused as they were for personal reasons. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The absences occurred from March 3 through September 8, a period of approximately six months. Seven unexcused absences over six months are sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. Accordingly, benefits are denied.

#### **DECISION:**

The representative's decision dated October 24, 2006, reference 01, is hereby affirmed. Mr. Carter was discharged 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.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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