

**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**

**JEFF G SCHAUB
2422 – 36TH ST
WYOMING MI 49509**

**ADVANCE BRANDS LLC
101 – 14TH ST SE WAY
ORANGE CITY IA 51041**

**Appeal Number: 04A-UI-07724-HT
OC: 06/13/04 R: 01
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Jeff Schaub, filed an appeal from a decision dated July 15, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 9, 2004. The claimant participated on his own behalf. The employer, Advance Brands LLC, participated by Human Resources Manager Jen Sandbulte and Benefits Coordinator Laura Mowe.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeff Schaub was employed by Advance Brands LLC from January 21, 2003 until May 12, 2004. He was a full-time maintenance mechanic.

The claimant had suffered a work-related injury in September 2003 and a non-work related injury in the first few months of 2004. He was on light duty as of his last day of work which was April 1, 2004. He was no-call/no-show to work after that date.

Mr. Schaub had requested a leave of absence from Benefits Coordinator Laura Mowe on or about March 26, 2004 because he wanted to see another doctor in Des Moines, Iowa. He did not yet have an appointment and, subsequently, did not see a doctor in Des Moines, but went to Sioux Falls, South Dakota. Ms. Mowe told him that the workers' compensation insurance carrier had to approve him seeing another doctor, and any leave of absence would have to be approved by Human Resources Manager Jen Sandbulte. The claimant somehow believed he had been approved for both the second doctor's opinion and the leave of absence and stopped coming to work.

Ms. Sandbulte attempted to contact him several times and eventually had to contact his attorney to get a new phone number for him. After at least one cancellation, a meeting was held between Mr. Schaub and the human resources manager on May 12, 2004. He had not provided any updated work restrictions to the employer at that time and had spent part of his absence dealing with personal issues instead of medical ones. He was notified by Ms. Sandbulte on May 12, 2004 he was discharged for failing to appear for work since April 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a, (7) provide:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being

limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant maintains he was approved for an unspecified period of leave by Ms. Mowe on or about March 26, 2004. However, the administrative law judge does not find this to be credible. The claimant had not been approved to be seen by another doctor, and he, in fact, was not seen by the doctor he allegedly requested the leave to see. In addition, he did not have an appointment with any doctor at the time he allegedly requested the leave. He was specifically told he would have to get approval from the human resources director which he failed to do. No documentation was provided to the employer by any physician excusing him from work after April 1, 2004, and nothing was submitted which changed his work restrictions.

The claimant was absent without proper excuse or notification for six weeks. While he may actually have been ill for part of the period, by his own admission, he spent part of the time dealing with personal issues for which he had also not been granted leave. In addition, absences due to illness which are not properly reported are considered unexcused. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The claimant is disqualified.

DECISION:

The representative's decision of July 15, 2004, reference 01, is affirmed. Jeff Schaub is disqualified, and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/tjc