

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

ROMAIN F HICKS
1883 QUEBEC AVE
STUART IA 50250

ADVANCE SERVICES INC
c/o TALX UCM SERVICES
P O BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-07803-HT
OC: 06/26/05 R: 03
Claimant: Respondent (2)

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
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Advance Services, filed an appeal from a decision dated July 20, 2005, reference 01. The decision allowed benefits to the claimant, Romain Hicks. After due notice was issued a hearing was held by telephone conference call on August 16, 2005. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Coordinator Mindy Shakelford.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Romain Hicks was employed by Advance Services, Inc. (ASI) from June 3, 2004 until June 27, 2005. During that time he had one assignment at Cardinal Glass on a temp-to-hire basis. He had received a copy of the attendance policy and it requires temporary workers to notify both ASI and the client company of any unscheduled absence at least one hour before the start of the shift.

Mr. Hicks received written warnings regarding his attendance on September 17, 2004, January 14 and May 27, 2005. He had been no-call/no-show to work for some of the absences. The warning in May 2005 notified him his job was in jeopardy if his attendance did not improve.

On June 27, 2005, the claimant was scheduled to work 3:00 p.m. until 11:00 p.m. Cardinal Glass contacted ASI after the start of the shift to request Mr. Hicks be removed from the assignment because he had been no-call/no-show to work. Human Resources Coordinator Mindy Shakelford called the claimant around 4:00 p.m. and asked why he had not been at work or called in. He merely said he was "sick," but did not explain why that had prevented him from calling in. Ms. Shakelford notified him he was fired.

Romain Hicks has received unemployment benefits since filing a claim with an effective date of June 26, 2005.

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 had been advised his job was in jeopardy as a result of his absenteeism. The final incident was a no-call/no-show to work. Although the claimant may have been ill, he failed to properly report his absence as required by the company policy. Failure to properly report an absence due to illness is an unexcused absence. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of July 20, 2005, reference 01 , is reversed. Romain Hicks is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1896.00.

bgh/tjc