

**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**

**RICHARD D PEARSALL
943 JAMES ST
WEBSTER CITY IA 50595**

**BEAM INDUSTRIES
WHITE CONSOLIDATED LTD
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 04A-UI-09135-CT
OC: 07/11/04 R: 01
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

Beam Industries filed an appeal from a representative's decision dated August 11, 2004, reference 01, which held that no disqualification would be imposed regarding Richard Pearsall's separation from employment. After due notice was issued, a hearing was held by telephone on September 16, 2004. The employer participated by Terry McCoy, Personnel Manager. Exhibits One through Six were admitted on the employer's behalf. Mr. Pearsall did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Pearsall was employed by Beam Industries from August 27, 2001 until July 15, 2004 as a full-time welding operator. Effective July 1, 2003, the employer implemented a "Pay-for-Improvement Plan" whereby employees would have the opportunity to earn raises by achieving several value-added activities. Individuals are scored based on activities during the fiscal year of July 1 through June 30. A minimum of 100 points is necessary in order to maintain employment. With respect to the fiscal year ending June 30, 2004, the minimum cut-off was 70 points. Mr. Pearsall was discharged because he scored less than 70 points.

The only area in which Mr. Pearsall had points deducted was his attendance. He was absent on December 15, 2003 to attend a funeral but it was not covered by the employer's bereavement policy. On June 3, 2004, he was 29 minutes late for unknown personal reasons. Mr. Pearsall called on June 9 to request a vacation day but his request was denied. He left work early on June 11 for a doctor's appointment. He requested to use vacation time to cover the absence but his request was denied. All of his remaining absences during calendar year 2004 were due to illness. Mr. Pearsall's final absence was on June 30, 2004 and was due to illness. He had received warnings about his attendance on June 15 and July 7, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Pearsall was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Pearsall was discharged, in essence, because of his attendance. An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Mr. Pearsall's tardiness of June 3 is considered a period of unexcused absence as it was for personal reasons. Because he did not indicate illness as the reason for the absence of June 9, the administrative law judge presumes that it was not due to the fact that he was sick but for other, personal reasons. Inasmuch as the evidence does not establish any reasonable cause for the absence, the administrative law judge considers it unexcused. The remainder of Mr. Pearsall's absences are considered excused as they were for reasonable cause and were properly reported to the employer. The fact that the employer may have considered an absence as unapproved is not binding on the administrative law judge. Mr. Pearsall's two unexcused absences did not represent current acts in relation to his discharge date or in relation to the cutoff date for those absences considered by the employer. The two unexcused absences are not sufficient to establish excessive unexcused absenteeism within the meaning of the law.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated August 11, 2004, reference 01, is hereby affirmed. Mr. Pearsall was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc