

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN D TAYLOR
Claimant

APPEAL NO. 10A-UI-15276-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C & S PRODUCTS CO INC
Employer

OC: 10/03/10
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

C & S Products Company Inc. filed a timely appeal from a representative's decision dated October 26, 2010, reference 01, that held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on December 14, 2010. Although duly notified, the claimant was not available at the telephone number provided. The employer participated by Mr. Kelly Thiele, Human Resource Coordinator.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Shawn Taylor was employed by C & S Products Company Inc. from November 25, 2007 until October 4, 2010 when he was discharged for exceeding the permissible number of attendance infractions allowed under company policy. Mr. Taylor worked as a full-time machine operator and was paid by the hour. His immediate supervisor was Mr. Rob Fitzthum.

Mr. Taylor was discharged after being removed from work by police authorities on September 30, 2010 and failing to report or provide notification to the employer thereafter. Prior to being discharged the claimant had received a final warning for attendance infractions and was suspended from work for three days.

Under the company's established attendance policy employees are subject to discharge if they accumulate more than four absences during a rolling period. Mr. Taylor was aware of the company policy and had been warned prior to his termination. The claimant had been warned that he would face termination from employment upon another incident of unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was discharged from employment due to job-related misconduct.

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(7) provides:

(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term absenteeism also encompasses conduct that more accurately is referred to as "tardiness." Absence related to issues of personal responsibility such as transportation, lack of childcare and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect employees to report for work as scheduled and to remain through the work shift, or to be notified when and why the employee is unable to report for work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence in combination with the claimant's history of unexcused absenteeism is considered excessive. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits

were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 26, 2010, reference 01, is reversed. The claimant was discharged from employment due to excessive unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the unemployment insurance benefits must be repaid is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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