

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A HABENICHT
Claimant

APPEAL NO. 10A-UI-15565-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HYPRO INC
Employer

OC: 10/03/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Habenicht filed an appeal from a representative's decision dated November 2, 2010, reference 01, which denied benefits based on his separation from Hypro, Inc. After due notice was issued, a hearing was held by telephone on January 6, 2011. Mr. Habenicht participated personally and Exhibits A and B were admitted on his behalf. The employer participated by Cindy Baumeister, Human Resources Manager; Karen Touve, Human Resources Administrator; Angie Maus, Human Resources; and Mark DeVries, Production Manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Habenicht began working for Hypro, Inc. on October 27, 2008. He worked full-time as a machinist. He was discharged because of his attendance. He acknowledges that he is an alcoholic and has been for what he describes as all his life. He went through treatment for alcoholism in 2003 and again in 2005. He missed time from work in 2010 as a result of drinking.

Mr. Habenicht received warnings regarding his attendance on April 13 and August 17, 2010. He missed time from work on September 17, 26, and 27. He met with the employer on September 28, 2010, and explained that he was having problems with alcohol. The employer referred him to its Employee Assistance Program (EAP) and offered him paperwork to take time off under the Family and Medical Leave Act (FMLA). He was told to take the time he needed to address his problem. Mr. Habenicht spoke twice to the psychiatrist provided through EAP. He was off work from September 29 until approximately October 11.

After his return to work, Mr. Habenicht relapsed and began missing time from work. He was absent October 21, 22, 25, and 26 because of his alcoholism. As a result, he was discharged on October 27, 2010. He entered a formal treatment program on November 12 and was

successfully discharged on December 9, 2010. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

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). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Mr. Habenicht had four consecutive unexcused absences, October 21, 22, 25, and 26. He had been warned both verbally and in writing that his attendance was jeopardizing his continued employment with Hypro, Inc. The administrative law judge appreciates that the absences that prompted the discharge were due to alcoholism. The administrative law judge also appreciates that alcoholism represents a disease process. Mr. Habenicht has been an alcoholic for a number of years and had undergone treatment on two occasions prior to his separation from Hypro, Inc. As an alcoholic, he knew or should have known that, if he took a drink, it was more likely than not that he might be unable to stop. Inasmuch as there were periods when he did not drink, it must be concluded that he had the ability to refrain from drinking. Mr. Habenicht chose to drink rather than refrain from drinking. Therefore, he is accountable for the conduct arising from his voluntary choice to drink.

Mr. Habenicht's four absences beginning October 21 are unexcused, as they were due to the effects of alcohol, which is not reasonable cause for missing work. Four consecutive unexcused absences after warning are sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated November 2, 2010, reference 01, is hereby affirmed. Mr. Habenicht was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw