

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN S HANNA
Claimant

APPEAL NO. 08A-UI-10543-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL EXPRESS CORP
Employer

**OC: 10/05/08 R: 03
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ryan Hanna filed an appeal from a representative's decision dated October 30, 2008, reference 01, which denied benefits based on his separation from Federal Express Corporation (FedEx). After due notice was issued, a hearing was held by telephone on November 25, 2008. Mr. Hanna participated personally. The employer did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hanna was employed by FedEx from March until September 26, 2008 as a full-time courier. He was discharged due to unacceptable attendance. He missed three days of work before receiving a written warning regarding his attendance. One day was due to the illness of his daughter and the remaining two were due to his own illness. He had been late to work on two occasions prior to the warning. The tardiness was by one or two minutes each time. He was not late after the warning.

Mr. Hanna received his written warning one week prior to his separation. He was told he would be discharged if he missed another day of work. He reported to work on September 25 in spite of the fact that he was not feeling well. He worked for approximately 2.5 hours and then spoke to the senior manager about leaving. He was not told he had to stay and, therefore, left for the day. He was discharged when he reported to work on September 26. Attendance was the only reason given for the discharge.

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 receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

All of the occasions on which Mr. Hanna was absent for the full day represent excused absences. All were for reasonable cause, either his own illness or that of his child. All of the absences were properly reported to the employer. The final absence on September 25 was due to the fact that Mr. Hanna was ill and had to leave work early. Although his two occasions of tardiness represented unexcused absenteeism, the evidence failed to establish that the tardiness represented current acts of misconduct as required for a disqualification. See 871 IAC 24.32(1). Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive.

While the employer may have had good cause to discharge Mr. Hanna, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated October 30, 2008, reference 01, is hereby reversed. Mr. Hanna was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw