

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J THOMPSON
Claimant

APPEAL NO. 11A-UI-05469-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEYER, RONALD P
RPM ENTERPRISES
Employer

OC: 01/30/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated April 13, 2011, reference 03, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on May 18, 2011. Claimant participated personally. The employer participated by Mr. Ronald Meyer, Company Owner.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Brian Thompson was most recently employed by RPM Enterprises from November 2010 until January 28, 2011 when he was discharged from employment. Mr. Thompson worked as a full-time mechanic and was paid by the hour. His immediate supervisor was Mr. Ronald Meyer.

Mr. Thompson was discharged when he reported to work on January 28, 2011 approximately one hour late. Mr. Thompson had called to inform the employer that morning that he would be late due to the requirement that he drop his children off at school. The claimant was discharged at that time because the employer felt they could no longer tolerate the claimant's poor attendance and poor punctuality.

Mr. Thompson previously worked for RPM Enterprises and had been rehired by the company. At the time of being rehired the claimant was reminded of the employer's expectations with respect to attendance and punctuality.

During the short period of time that Mr. Thompson had been re-employed by the company he was often tardy or absent due to illness or family obligations. The claimant in most instances would inform the employer in advance that he would be late or absent and the employer gave the claimant "tacit" approval for his absences or late arrivals. After the reminder at the time of

hire the claimant was not specifically warned or counseled by the employer about his attendance or punctuality and was not sufficiently aware that his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984).

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The court held that the absences must both be excessive and unexcused and the concept included tardiness, leaving early, etc. The court further held, however, that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

In this case the claimant was reminded at the time of being rehired of the employer's expectation that he would be punctual and not be excessively absent. Following that general caveat at the time of hire, however, the record does not establish that Mr. Thompson was sufficiently warned or counseled that his employment was in jeopardy and that he was subject to being discharged if he were again absent or tardy. The claimant believed that he was receiving tacit approval from the employer when he called in to report that he was going to be late or absent.

The question before the administrative law judge is not whether the employer has a right to discharge Mr. Thompson for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Thompson was clearly a good business decision, for the above-stated reasons the administrative law judge concludes that the claimant was not discharged for intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated April 13, 2011, reference 03, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs