

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS B CARRICK**  
Claimant

**APPEAL NO. 09A-UI-10668-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OZARK AUTOMOTIVE DISTRIBUTORS INC**  
Employer

**Original Claim: 06/21/09  
Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 23, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 24, 2009. Claimant Travis Carrick participated. Whitney Smith, Human Resources Supervisor, represented the employer. Exhibits One through Eight were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Travis Carrick was employed by Ozark Automotive Distributors, Inc., as a full-time outbound materials handler from 2002 until June 25, 2009, when the employer discharged him for attendance. At the end of the employment, Mr. Carrick's immediate supervisors were Order Selection Supervisors Robert Overton and Cheryl Branson. Mr. Carrick's regular work hours were 9:00 a.m. to 6:00 p.m.

The employer's absence reporting policy required that Mr. Carrick notify a supervisor by the start of his shift if he needed to be absent. Mr. Carrick was aware of the policy.

The final absence that triggered the discharge occurred on June 25, 2009, when Mr. Carrick was tardy because he overslept and because he had difficulty getting his car started. The next most recent attendance matter that factored into the discharge occurred on March 25, 2009, when Mr. Carrick was absent due to illness and properly reported the absence. Prior to that, Mr. Carrick was absent on January 15, 2009 because he could not get his car started in the cold weather. Prior to that, On January 5, 2009, Mr. Carrick was absent due to illness properly reported to the employer.

The employer had issued warnings to Mr. Carrick regarding his attendance. On October 23, 2008, the employer issued a verbal warning. The employer was unable to provide information

concerning the attendance matters that triggered the verbal warning. On January 7 and January 16, 2009, the employer issued written warnings. On March 26, 2009, the employer imposed a decision making day.

### **REASONING AND CONCLUSIONS OF LAW:**

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The weight of the evidence establishes an unexcused absence on June 25, 2009, when Mr. Carrick overslept and had problems starting his car. The evidence establishes another unexcused absence on January 15, 2009, when Mr. Carrick could not start his car in the cold and ended up being absent for his entire shift. The evidence establishes no additional unexcused absences. Instead, the other absences were for illness properly reported and were excused absences under the applicable law. The evidence fails to establish excessive unexcused absences.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Carrick was discharged for no disqualifying reason. Accordingly, Mr. Carrick is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Carrick.

**DECISION:**

The Agency representative's July 23, 2009, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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