

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BUSTER D SEIDEL**  
Claimant

**APPEAL NO. 09A-UI-15013-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RMT INC**  
Employer

**Original Claim: 04/05/09  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Buster Seidel filed an appeal from a representative's decision dated September 30, 2009, reference 01, which denied benefits based on his separation from RMT, Inc. After due notice was issued, a hearing was held by telephone on November 5, 2009. Mr. Seidel participated personally and offered additional testimony from Bruce Seidel and Greg Reed. The employer participated by Diane Daniel, Human Resources Manager, and Josh Neudorf, Erection Superintendent.

**ISSUE:**

At issue in this matter is whether Mr. Seidel 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. Seidel was employed by RMT, Inc. from April 27 until August 28, 2009 as a full-time ironworker. He was discharged because of his attendance, primarily tardiness. He was absent for unknown reasons on June 30, July 7, and July 15. The employer was unable to provide specific dates on which he was late reporting for work. Attendance was the sole reason given 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. Tardiness in reporting to work is considered a limited absence from work. There must be a current act of unexcused absenteeism to support a disqualification from benefits.

See 871 IAC 24.32(8). It is incumbent upon the employer to provide specific details concerning the reason for separation, as mere allegations of misconduct are not sufficient to result in disqualification. See 871 IAC 24.32(4).

The employer was only able to list three dates on which Mr. Seidel missed the entire workday, the last of which was July 15, 2009. An absence that occurred on July 15 would not constitute a current act in relation to the August 28 discharge date. The employer did not provide any records or testimony as to the specific dates on which Mr. Seidel had reported to work late. Nor was the employer able to identify the last date on which he had been late prior to discharge. Without details concerning the tardiness, the administrative law judge cannot determine whether it represented excessive unexcused absenteeism. Moreover, the administrative law judge cannot determine whether there was a current act of unexcused tardiness in relation to the discharge date.

Based on the foregoing, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Mr. Seidel was discharged for excessive unexcused absenteeism. Inasmuch as no other reason was given for the discharge, benefits are allowed.

**DECISION:**

The representative's decision dated September 30, 2009, reference 01, is hereby reversed. Mr. Seidel was discharged by RMT, Inc., but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw