

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RODNEY D BLOOM
1459 WARREN AVE
CUMMING IA 50061**

**CEMEN TECH INC
1700 N 14TH ST
INDIANOLA IA 50125-1506**

**Appeal Number: 05A-UI-08237-A
OC: 07-17-05 R: 02
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cemen Tech, Inc., filed a timely appeal from an unemployment insurance decision dated August 10, 2005, reference 01, which allowed benefits to Rodney D. Bloom. After due notice was issued, a hearing was held in Des Moines, Iowa on September 8, 2005 with Mr. Bloom participating. Human Resources Director JoAnn Steinbach and Assistant Production Manager Aubrey Minnis participated for the employer. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Rodney D. Bloom was employed as a production worker by Cemen Tech, Inc. from October 16, 2000 until he was discharged July 13, 2005. The final incident leading to the discharge was Mr. Bloom's absence on July 12, 2005. He called the employer to advise that he would not be coming to work, but he did not give a reason for the absence and he did not return with a doctor's note. Company policy requires employees to give the reason for an impending absence and to return with medical verification following an absence due to illness or injury. Mr. Bloom had not given a reason for his absence because he was angry at having hurt his back at work on July 11, 2005. He did not report the injury either on July 11th or when he arrived to work on July 13, 2005. Mr. Bloom had received two warnings and a three-day suspension earlier in 2005 for poor attendance. He was late a total of 26 times in 2005.

Mr. Bloom has received no unemployment insurance benefits since filing a claim effective July 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to a medical condition is excused if, and only if, the individual properly reports the absence to the employer. See 871 IAC 24.32(7).

The administrative law judge views the final incident as an unexcused absence. Mr. Bloom did not properly report it to the employer because he failed to state the reason for the impending absence and he failed to return with medical verification. This absence when viewed in the context of the prior incidents and prior discipline is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated August 10, 2005, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

pjs/pjs