

**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**

**RICHARD C BOTTENBERG  
1117 PRAIRIE VIEW DR  
WEST DES MOINES IA 50266-7210**

**BEST BUY STORES  
c/o TALX CORPORATION  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 06A-UI-03887-CT  
OC: 03/12/06 R: 02  
Claimant: Respondent (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Best Buy Stores filed an appeal from a representative's decision dated March 29, 2006, reference 01, which held that no disqualification would be imposed regarding Richard Bottenberg's separation from employment. After due notice was issued, a hearing was held by telephone on April 26, 2006. Mr. Bottenberg participated personally. The employer participated by Angela Cleaver, General Manager, and was represented by Rachel Thompson of Talk Employer Services. Exhibits One through Four were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bottenberg was employed by Best Buy Stores from April of 1999 until January 29, 2006. He was last employed full time as manager of the home-theater area. He was discharged because of his attendance.

Mr. Bottenberg was 50 minutes late on September 15, 2005 because he overslept. On December 6, 2005, he was scheduled to be at work at 10:00 a.m. but did not arrive until approximately 1:00 p.m. because of illness. He had not contacted his supervisor as required, only a coworker from his department. The decision to discharge was based on Mr. Bottenberg's absence of January 26. He left a telephone text message for the general manager at midnight on January 25 indicating he had been sick all day and did not think he would be in on January 26 unless he woke up feeling a lot better. The employer expected him to confirm whether he would or would not be in on January 26. Because he did not, he was notified of his discharge on January 29, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Bottenberg was separated from employment for any disqualifying reason. 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. Absences that are for reasonable cause and are properly reported are considered excused absences.

Mr. Bottenberg was discharged as a result of three periods of absenteeism. He was almost one hour late on September 15, 2005 because he overslept. The tardiness is unexcused as oversleeping is not reasonable grounds for missing time from work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Bottenberg was late on December 6, 2005 because of illness. However, he did not properly report the absence by notifying his general manager. He did notify someone from his work area and, therefore, the employer had timely notice that he would not be at work on time. Mr. Bottenberg was absent on January 26, 2006. Although he notified the general manager that he might not be at work, he failed to confirm his intentions. The text message he sent left open the possibility that he would be at work. Mr. Bottenberg used poor judgment in not confirming whether he would or would not be at work.

Mr. Bottenberg's absences of December 6 and January 25 were not reported within the precise guidelines set by the employer. However, both were reported. Given his good-faith efforts to give notice on both occasions, the administrative law judge concludes that the two absences are not sufficient to establish excessive unexcused absenteeism within the meaning of the law. While the employer may have had good cause to discharge, 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 March 29, 2006, reference 01, is hereby affirmed. Mr. Bottenberg was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc