

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

ANDRE BOHANNON
502 DURANT ST
HARLAN IA 51537-1729

ADVANCE SERVICES INC
c/o TALX UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 06A-UI-03164-AT
OC: 02/19/06 R: 01
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 for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from an unemployment insurance decision dated March 6, 2006, reference 01, which allowed benefits to Andre Bohannon. After due notice was issued, a telephone hearing was held on March 30, 2006, with Mr. Bohannon participating. Office Manager Mary Murtaugh participated for the employer. 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: Andre Bohannon was employed by Advance Services, Inc. from January 19, 2005, until he was discharged February 20, 2006. He last served as a maintenance worker. Mr. Bohannon was discharged because of poor attendance. He was absent on February 15, 2006 because he was stranded in Omaha, Nebraska without transportation. He was absent on February 14, 2006 because of a flat tire. He was absent on January 20, 2006 because he lacked childcare. He was also tardy on January 16, 2006. The employer's attendance policy provides for discharge at the accumulation of 3½ attendance points. Mr. Bohannon received a warning on or about February 24, 2006 that his employment was in jeopardy because of poor attendance. Mr. Bohannon has received unemployment insurance benefits as filing a claim effective February 19, 2006.

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 is one form of misconduct. See 871 IAC 24.32(7). Absence due to matters of personal responsibility such as childcare and transportation is considered to be unexcused whether or not the individual properly reports the absence to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence in this record establishes that Mr. Bohannon was absent for personal reasons on January 20, February 14 and February 15, 2006 and that he had been tardy on January 16, 2006. These occurrences, taken in light of his prior discipline, are sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

Mr. Bohannon has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated March 6, 2006, 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. He has been overpaid by \$644.00.

cs/tjc