

**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**

**BARBARA A COEN
1424 – 240TH ST
WEBSTER CITY IA 50595**

**VAN DIEST SUPPLY COMPANY
PO BOX 610
WEBSTER CITY IA 50595**

**Appeal Number: 06A-UI-00120-CT
OC: 11/27/05 R: 01
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, 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

STATEMENT OF THE CASE:

Van Diest Supply Company filed an appeal from a representative's decision dated December 30, 2005, reference 01, which held that no disqualification would be imposed regarding Barbara Coen's separation from employment. After due notice was issued, a hearing was held by telephone on January 23, 2006. Ms. Coen participated personally. The employer participated by Clark Vold, Production Manager, and Kathy Osmanski, Personnel Manager. Exhibits One through Six 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: Ms. Coen was employed by Van Diest Supply Company from October 15, 2003 until December 1, 2005 as a full-time production worker. She was discharged because of her attendance. Employees are given a bank of eight attendance points and are subject to discharge when those points are depleted. Points are added when there is perfect attendance during a month.

All of Ms. Coen's absences were properly reported. All of her absences prior to November of 2005 were due to illness, the bulk of which were verified by doctor's statements. On November 7, she was absent to care for her grandchild because her daughter was having a baby. On November 30, she was absent because her vehicle went into a ditch on the way to work. As of November 30, Ms. Coen had only one-half of an attendance point remaining. Even if she had reported to work late on November 30, she would have been discharged as the tardiness would have caused her to reach a zero balance in attendance points.

Ms. Coen received warnings regarding her attendance on February 17, October 21, and November 1, 2004, and on February 8, 2005. Attendance was the sole reason for the December 1, 2005 discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Coen 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 she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. The administrative law judge is not bound by an employer's designation of an absence as unexcused.

All of the absences that caused Ms. Coen's discharge are excused except for those of November 7 and November 30. The absence of November 7 is unexcused as it was due to a matter of purely personal responsibility, the care of a grandchild. The absence of November 30 is unexcused as it was due to a transportation issue. However, Ms. Coen did not have a history of missing work or reporting to work late because of transportation issues.

Under the unforeseen nature of Ms. Coen's final absence, the administrative law judge concludes that the two unexcused absences identified herein are not sufficient to establish excessive unexcused absenteeism within the meaning of the law. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. 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 stated herein, benefits are allowed.

DECISION:

The representative's decision dated December 30, 2005, reference 01, is hereby affirmed. Ms. Coen was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc