

**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**

**CLINT S POWERS
PO BOX 12 APT 13
CENTERVILLE IOWA 52544**

**IOWA STEEL & WIRE COMPANY
1500 W VAN BURDEN
PO BOX 156
CENTERVILLE IA 52544**

**Appeal Number: 05A-UI-07206-CT
OC: 12/19/04 R: 03
Claimant: Appellant (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:

Clint Powers filed an appeal from a representative's decision dated July 11, 2005, reference 03, which denied benefits based on his separation from Iowa Steel & Wire Company. After due notice was issued, a hearing was held by telephone on August 1, 2005. The employer participated by Cliff Jones, Human Resources Manager. Mr. Powers responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Powers was employed by Iowa Steel & Wire Company

from March 24, 2004 until June 20, 2005 as a full-time laborer. He was discharged because of his attendance.

Individuals are required to report absences prior to the start of the work shift. Mr. Powers was absent on April 18 and April 27, 2005 because his mother was ill. He did not report either absence until after the start of his shift. On May 18, he was absent without calling in. He was verbally warned about his attendance on May 19. Mr. Powers was absent on May 20 to take his mother for medical treatment in Iowa City and on May 23 because of his own illness. He was given a written warning on June 3. On June 20, Mr. Powers was again absent without calling in. He called to report that he would be absent due to his own illness on June 21. The decision was made to discharge him at that point.

In addition to his absences, Mr. Powers was also late reporting to work on a number of occasions. He was late on at least eight occasions from April 6 through May 11, 2005. The tardiness ranged from 2 minutes to 30 minutes. Attendance was the sole reason for his discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Powers 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 job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Mr. Powers' absences of April 18 and April 27 are unexcused as they were not timely reported. He did not call until after the start of his shift on both occasions. The absences of May 18 and June 20 are unexcused as he failed to contact the employer to report that he would be absent. In addition to the above four unexcused absences, Mr. Powers was also late reporting to work on at least eight occasions beginning April 6, 2005. The evidence does not establish any reasonable cause for the tardiness. The history of unexcused absenteeism identified herein is sufficient to establish excessive unexcused absenteeism within the meaning of the law. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect.

It is true that the final absence that triggered the discharge was due to illness and was properly reported. However, there was a current unexcused absence in relation to the discharge date. The unreported absence of June 20 was the day prior to discharge. For the reasons stated herein, it is concluded that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated July 11, 2005, reference 03, is hereby affirmed. Mr. Powers was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs