

**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**

**THOMAS L HOCKENBERG  
658 – 39<sup>TH</sup> ST  
DES MOINES IA 50312**

**ARTISTIC MANUFACTURING CORP  
C/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**HARLAN HOCKENBERG  
ATTORNEY AT LAW  
801 GRAND AVE #3500  
DES MOINES IA 50309**

**Appeal Number: 04A-UI-10107-CT  
OC: 08/22/04 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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Artistic Manufacturing Corporation (Artistic) filed an appeal from a representative's decision dated September 10, 2004, reference 01, which held that no disqualification would be imposed regarding Thomas Hockenberg's separation from employment. After due notice was issued, a hearing was held by telephone on October 11, 2004. Mr. Hockenberg participated personally and was represented by Harlan Hockenberg, Attorney at Law. The employer participated by Earl Harrison, Plant Superintendent, and was represented by Marci Schneider of Employers Unity, Inc. Exhibits One, Two, and Three were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Hockenberg was employed by Artistic from August 14, 2002 until August 24, 2004. He worked full time in packing. He was discharged because of his attendance.

Mr. Hockenberg did not always work the 40 hours per week he was scheduled to work. The employer did not provide a record of specific dates on which he had been absent. The employer considers an unexcused absence to be any absence which is not arranged in advance. Mr. Hockenberg also had a problem with tardiness in reporting to work. The employer did not provide specific dates on which he had been late prior to his last day of work. Mr. Hockenberg was suspended for three days on February 11, 2004 because of his attendance. He was again suspended for three days on August 19 because of his attendance. The decision to discharge was based on the fact that Mr. Hockenberg was late on August 25. The parties disagree as to whether the tardiness was by 4 minutes or 13 minutes. Attendance was the sole reason for the August 25, 2004 discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Hockenberg 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. See 871 IAC 24.32(7). Tardiness is considered a limited absence from work.

It is incumbent on the employer to provide specific details as to the reason for an individual's discharge as mere allegations of misconduct are not sufficient to result in disqualification from benefits. See 871 IAC 24.32(4). Other than the tardiness of August 25, the employer did not provide details as to the dates of Mr. Hockenberg's other attendance infractions. This evidence was within the control of the employer. The administrative law judge is not bound by the employer's designation of an absence as unexcused. The employer failed to establish that Mr. Hockenberg's absences of a full day were unexcused within the meaning of the Iowa Employment Security Law. The administrative law judge does not doubt the employer's testimony that Mr. Hockenberg was late reporting to work on occasions prior to August 25, 2004. The only date of tardiness identified in the record is that of August 25. Without knowing the other dates on which he was late, the administrative law judge cannot determine if the tardiness was excessive.

The fact that an individual has failed to work a full-time week on a number of occasions does not, in and of itself, establish excessive unexcused absenteeism. The administrative law judge concludes that the employer has failed to provide sufficient detailed information regarding Mr. Hockenberg's attendance to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein,

it is concluded that the employer has failed to satisfy its burden of proof in this matter. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated September 10, 2004, reference 01, is hereby affirmed. Mr. Hockenber was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf