

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRADLEY J ALBER
Claimant

APPEAL NO. 06O-UI-11445-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WOODBURY CONSTRUCTION
Employer

**OC: 09/10/06 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Woodbury Construction filed an appeal from a representative's decision dated September 29, 2006, reference 01, which held that no disqualification would be imposed regarding Bradley Alber's separation from employment. After due notice was issued, a hearing was held by telephone on October 17, 2006. The October 20, 2006 decision of the administrative law judge affirmed the allowance of benefits. The employer filed a further appeal with the Employment Appeal Board which, on November 22, 2006, remanded the matter for a new hearing on a finding that the employer had been denied the opportunity to participate in the prior hearing.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on December 14, 2006. The employer participated by Lowell Woodbury, Owner, and was represented by Jack Bjornstad, Attorney at Law. Exhibits One and Two were admitted on the employer's behalf. Mr. Alber did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Alber was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Alber was employed by Woodbury Construction from June until September 6, 2006 as a full-time carpenter. He was discharged due to his attendance, poor job performance, and for violating the employer's standards.

Mr. Alber received a verbal warning on June 28 because he had been late reporting to work on two occasions since he started. He received a written warning on July 24 after he missed two days of work because of a rash but did not provide a doctor's statement. The warning was also due to the fact that he was smoking on the job in violation of the employer's policy. The warning also addressed Mr. Alber's poor job performance. The employer found that his skills were not as good as he had indicated before being hired. A deck he built had to be torn out and re-built.

He also had difficulty reading a level. Mr. Alber was advised that he would be discharged if he did not show improvement.

After July 24, Mr. Alber was late on two other occasions prior to his last day of work. The employer had not noted any improvement in his work skills. Mr. Alber was 45 minutes late on September 6 with no notice to the employer. The employer also discovered on September 6 that Mr. Alber had been smoking on the job site. He had been smoking near extremely flammable material. He was notified of his discharge the same day.

REASONING AND CONCLUSIONS OF LAW:

Mr. Alber was discharged from employment. 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). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof in this matter. Mr. Alber had been warned about his tardiness and his smoking on the job. In spite of a verbal warning, he continued to report to work late and was again late on September 6. He was late at least three times after the verbal warning, including the day of discharge. The evidence does not establish any reasonable cause for the tardiness.

Mr. Alber had also been warned about smoking on the job. In spite of the warnings, he continued to smoke on the job site. His smoking on September 6 could have resulted in a fire and damage to the customer's home as he was smoking near flammable material. The administrative law judge concludes that Mr. Alber's repeated tardiness and smoking on the job are sufficient to establish a substantial disregard for the employer's interests and standards. For the above reasons, benefits are denied.

No overpayment results from this reversal of the prior allowance as Mr. Alber has not been paid benefits on his claim filed effective September 10, 2006.

DECISION:

The representative's decision dated September 29, 2006, reference 01, is hereby reversed. Mr. Alber 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs