

disconnected before speaking with the administrative law judge but did not call back. The hearing had previously been scheduled for November 9, 2005 but was rescheduled for a Friday at Mr. Dunn's request because that is his day off from work. Having not spoken with Mr. Dunn, the administrative law judge does not know if he made any effort to advise his current employer that he had a prior commitment that prevented him from working on his day off. Absent evidence that he made any good-faith effort to participate in the hearing, the administrative law judge did not postpone the hearing. An attempt was made to contact Mr. Dunn at the scheduled time of the hearing but his number was answered by voice mail.

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: Mr. Dunn was employed by Qwest from February 18, 2002 until September 9, 2005. He worked full time as a sales and service consultant. Mr. Dunn was discharged because of his repeated tardiness in reporting to work after being warned.

Mr. Dunn received written warnings concerning his attendance on January 27 and February 10, 2004. The warning of February 10 was denominated as a "warning of dismissal." Because of additional attendance infractions, the warning of dismissal was repeated on January 19, 2005. At that point, Mr. Dunn had been 7 minutes late on November 19; 1 hour and 59 minutes late on November 24; and 36 minutes late on December 24, 2004. He was also 15 minutes late on January 11, 2005. The warning of dismissal was again restated on April 6, 2005. Between January 11 and April 6, Mr. Dunn had accumulated additional absences and had been 1 hour and 56 minutes late on January 21.

Mr. Dunn was late on April 15, May 9, May 16, May 20, and May 25, 2005. The tardiness ranged from 5 minutes to 21 minutes. On May 25 he was again warned about his tardiness. Thereafter, he was 6 minutes late on June 13, and 7 minutes late on June 20 and June 22. He was off work on short-term disability from July 6 through August 30. Mr. Dunn was absent without calling in on September 2. The decision to discharge was based on the fact that he was five minutes late on September 7. Although he told the employer he was not late, a manager had observed him enter the building approximately four minutes after his 8:00 a.m. start time on September 7. Mr. Dunn was notified of his discharge on September 9, 2005.

Mr. Dunn has received a total of \$1,348.00 in job insurance benefits since filing his claim effective September 11, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Dunn 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 he was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. Tardiness is considered a limited absence from work and is, therefore, assessed by the same criteria.

Mr. Dunn was late reporting to work on 11 occasions in calendar year 2005 alone. His employment ended on September 9 and he had been away from work for approximately two months on disability in 2005. Therefore, the 11 occasions referenced herein occurred over a period of approximately seven months. Mr. Dunn had received numerous warnings about his tardiness and knew that his continued employment with Qwest was in jeopardy because of his tardiness. In spite of the warnings, he did not take those steps necessary to ensure his timely arrival at work. The administrative law judge considers 11 occasions of tardiness over seven months to be excessive. Inasmuch as the evidence does not establish any reasonable cause for the tardiness, it is considered unexcused. For the reasons stated herein, it is concluded that the employer has established excessive unexcused absenteeism, which is a substantial disregard for the standards an employer has the right to expect. As such, it constitutes disqualifying misconduct. Accordingly, benefits are denied.

Mr. Dunn has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 4, 2005, reference 01, is hereby reversed. Mr. Dunn 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. Mr. Dunn has been overpaid \$1,348.00 in job insurance benefits.

cfc/tjc