IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

JAMIE A SHERIDAN
Claimant

MIKE FINNIN FORD LLC
Employer

APPEAL NO. 15A-UI-04665-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/22/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mike Finnin Ford (employer) appealed a representative's April 10, 2015 (reference 01) decision that concluded Jamie Sheridan (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 27, 2015. The claimant participated personally. The employer participated by Gabriel Finnin, General Manager; David Houghten, Sales Manager; and Rob Hoffmann, Sales Consultant. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 26, 2010 as a full-time sales consultant. The claimant signed for receipt of the employer's handbook on August 24, 2010. Sales consultants are paid commission. Breaks and lunch times were not specified but they would gain nothing if they were absent from work. The handbook specified they worked 9:00 a.m. to 8:00 p.m. on Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturday. They had one day off per week, one night off per week, and one Saturday off per month. The claimant had Tuesdays off.

The claimant did not have any warnings until a new sales manager was hired. The sales manager brought with him employees. The claimant felt the sales manager gave them special treatment. The claimant brought his concerns to the sales manager. On May 2, 2014, the sales manager issued the claimant a warning for unprofessional conduct and gossiping because he brought his concerns to the sales manager. The employer notified the claimant that further infractions could result in termination from employment. On June 5, 2014, the employer issued the claimant a written warning for leaving the sales floor with customers on the floor and without signing out. The claimant does not remember receiving the warning and would never do this.

The sales manager signed out a dealer car to the claimant's fiancée while her car was being serviced. The fiancée drove the car home. The sales manager retrieved the car from the claimant's house and drove it back to the dealership. On October 14, 2014, the sales manager issued the claimant a written warning for driving a dealer car. The claimant never drove the dealer car. The employer notified the claimant that further infractions could result in termination from employment.

On February 4, 2015, the employer wrote the claimant a warning for taking more than one hour for lunch. The claimant never received the warning and was never told he had to limit his lunch time to one hour.

The claimant was absent due to a medical issue during the last week of January 2015. When he returned to work in February 2015, he noticed he did not have a Saturday off. He asked the sales manager what Saturday he should take off. The sales manager told him to take February 7, 2015. The sales manager does not remember telling him this. The claimant did not appear for work on February 7, 2015. The employer terminated the claimant on February 9, 2015.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2015. The employer participated personally at the fact-finding interview on April 6, 2015 by Gabriel Finnin.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

The employer terminated the claimant for excessive absenteeism for having three absences. The employer provided evidence of two previous incidents of absenteeism. With regard to the February 2015 incident, the employer did not show that the claimant knew he was supposed to limit his lunch time to one hour. In addition, it is uncertain whether the claimant received one or both warnings. Lastly, two absences in two years or over the claimant's more than four years of employment, is not excessive. Moving to the final absence, the employer did not have the claimant's February 2015 work schedule in front of them while they were giving testimony. They did not know what Saturday the claimant had off. The claimant remembered clearly that he had no Saturday off in February 2015 and the employer assigned him February 7, 2015 as his Saturday off.

The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 10, 2015 (reference 01) decision is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

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