

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSE R SMITH
Claimant

HARVEYS BR MANAGEMENT CO INC
Employer

APPEAL 15A-UI-06741-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 2, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 14, 2015. Claimant participated. Employer participated through Human Resource Generalist Vicki, Broussard, Robin Reber, and Employer Representative Michele Hawkins. Employer Exhibit One was admitted with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a dual rate supervisor from February 6, 2013, and was separated from employment on May 19, 2015, when he was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardiness. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving ten points in a year. Claimant was made aware of the employer's policy at the time of hire. Employer Exhibit 1.

The final incident occurred when the claimant was tardy on May 18, 2015 for his shift. Claimant was tardy because of transportation issues. Claimant got stuck in traffic and called his supervisor, but he was still late. Claimant testified that the employer did not terminate a different employee for reaching ten points.

The employer issued a final written warning to claimant on April 4, 2015 after missing a mandatory meeting on April 1, 2015. The final written warning informed claimant that he faced termination from employment upon receiving two more points.

Prior to May 18, 2015, Claimant violated the attendance policy and received points for being absent or tardy on: May 3, 2015, May 1, 2015, April 1, 2015, March 16, 2015, December 16, 2014, November 16, 2014, November 15, 2014, August 29, 2014, August 16, 2014, August 15, 2014, August 12, 2014, August 10, 2014, and August 1, 2014.

The employer allows employees to take up to six weeks in personal leave, which is a separate benefit from paid time off, if it has been approved. Claimant took advantage of this benefit and took approved personal leave from September 11, 2014 through September 15, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. Claimant was aware the employer had an attendance policy. Employer Exhibit One. Claimant was aware his job was in jeopardy after receiving the final written warning on April 4, 2014.

Claimant alleged that the employer chose to apply the policy differently to him. Claimant testified that another employee was not terminated upon reaching ten absence points. However, the employer has worked with claimant in the past regarding his attendance issues. In September of 2014, the employer did approve personal leave for claimant from September 11, 2015 through September 15, 2015. It is also instructive that claimant's tardy on May 18, 2015 was not his only violation of the attendance policy after he received a final written warning on April 4, 2015. Claimant was also absent from employment on May 1 and May 3, 2015.

Claimant was aware his job was in jeopardy, and required to make the necessary arrangements to be at work on time. The employer has credibly established that the claimant was warned that further unexcused absences could result in termination of employment and the final tardy on May 18, 2015, was not excused. The final tardy, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 2, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/mak