

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMON L BAKER
Claimant

APPEAL NO. 12A-UI-03798-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

**OC: 07/03/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Damon Baker (claimant) appealed a representative's April 6, 2012 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Winnebago Industries (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 26, 2012. The claimant participated personally and through his wife, Karin Baker. The employer participated by Gary McCarthy, Personnel Supervisor, and Scott Norstrud, Supervisor.

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 22, 1996, as a full-time senior machine set up operator. The claimant signed for receipt of the employer's handbook on September 22, 2006. The handbook indicates that employees are supposed to report absences to an 800 number within one hour of the start of the shift. On December 19, 2011, the employer issued the claimant a warning for being twelve minutes late for work on December 19, 2011. The claimant's tardiness was weather related. He did not allow himself enough time to get to work in icy and snowy conditions. On February 20, 2012, the employer issued the claimant a written warning for the claimant's absences on February 16 and 17, 2012, to care for his wife and run his business while his wife was ill. Prior to the absences the claimant told his supervisor that he would be absent. The supervisor told the claimant that he did not have vacation time to cover the absences. The claimant indicated that he knew this fact. The claimant did not report his absence to the 800 number on February 16 and 17, 2012. On March 7, 2012, the employer issued the claimant a written warning and two-day suspension for his absences on March 5 and 6, 2012, to run his business while his wife was gone. The claimant called the 800 number but not within one hour of the start of the shift. The employer notified the claimant that further infractions could result in termination from employment.

On March 12, 2012, the claimant was absent due to illness but did not properly report his absence to the 800 number within one hour of the start of his shift. On March 13, 2012, the claimant was one hour late for work and did not report his tardiness. The employer terminated the claimant on March 13, 2012, for absenteeism and failure to properly report absences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 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.

871 IAC 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's April 6, 2012 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs