

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KEVIN R LECLERE
Claimant

ARCHER-DANIELS-MIDLAND CO
Employer

APPEAL 15A-UI-03408-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/22/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 5, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2015. Claimant participated along with his grandfather, Nelson Leclere. Employer participated through Kristin Jones, Human Resources Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected 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 mill operator II beginning on March 17, 2014 through February 2, 2015 when he was discharged. The claimant was given a copy of the employer's attendance policy when hired and knew that if he reached twenty-four points he would be discharged. The claimant lives in Iowa and knew or should have known that there are occasions when weather conditions make it necessary to leave for work early. The claimant was given numerous written warnings outlined in Employer's Exhibit One. He was given his final warning on January 29, 2015 that put him on notice that any further incidents of unexcused absenteeism or tardiness would lead to his discharge. The claimant had been absent, tardy or left early more than ten times in less than one year of employment. The claimant was four hours late to work on February 1, 2015 because he did not start to shovel out his car early enough to get to work on time. The claimant was able to get to work, just not on time.

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.

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). Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to 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 March 5, 2015 (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs