

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TERRY R TIGGENS
Claimant

APPEAL NO: 19A-UI-00078-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOORMAN ENTERPRISES INC
Employer

OC: 12/09/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 28, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 18, 2019. The claimant participated in the hearing. Patti Moorman, Owner; Diane Dearden, Office Manager; and Misty Krueger, Secretary/Receptionist; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time technician for Moorman Enterprises, Inc. (Service Master) from September 24, 2018 to December 6, 2018. He was discharged from employment due to a final incident of absenteeism that occurred on December 6, 2018.

The claimant was hired and placed on a 90 day probationary period. He was discharged for attendance.

During the 11 weeks the claimant was employed he worked forty hours six weeks and failed to work forty hours five weeks. On October 19, 2018, the claimant was a no-call/no-show. Later that day he contacted the employer and stated he had been arrested in Iowa City and jailed. The claimant was on-call on weekends and was unreachable the weekends beginning October 12 and November 23, 2018. The employer chose to provide the claimant with rides to and from work from a designated pick up/drop off location. On October 13, 2018, the employer spent 20 minutes trying to find the claimant to give him a ride. On two occasions the employer had to go to the claimant's house to get him. On October 20, 2018, he notified the employer he needed to attend court proceedings in Chicago October 24, 2018. On November 19, 2018, the claimant was a no-call/no-show.

On December 3, 2018, the claimant texted the employer at 8:24 a.m. and reported he was ill and would not be in for his 7:45 a.m. shift. He texted the employer December 4, 2018, after the start of his shift and stated he was still sick and would not be at work. He texted the employer at 5:31 a.m. December 5, 2018, and said he was still sick and would not be at work. The employer texted the claimant that afternoon and said he needed a doctor's excuse to return to work. The claimant did not respond. He was a no-call/no-show December 6, 2018, and the employer terminated his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

In less than 90 days of employment, the claimant accumulated three no-call/no-show absences. The last no-call/no-show absence occurred December 6, 2018. While the claimant may have been ill the employer tried to reach him December 5 and December 6, 2018, and did not get a response and he did not properly report his absence December 6, 2018. In addition to the no-call/no-show absences, the claimant failed to work a full workweek five of the 11 weeks he was employed with the employer. He was also frequently late for pickup which resulted in the entire crew being late.

The employer has established that the claimant's final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The December 28, 2018, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn