

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WESLEY P BARKSDALE
Claimant

APPEAL NO: 14A-UI-11434-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/12/14
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 October 30, 2014, 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 November 25, 2014. The claimant participated in the hearing. Kristi Fox, Human Resources Clerk, 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 production worker for Tyson Fresh Meats from May 7, 2012 to October 8, 2014. He was discharged from employment due to a final incident of absenteeism that occurred on October 7, 2014.

The employer uses a point-based, no-fault attendance policy and employees are discharged upon reaching ten points. Employees receive one attendance point for each properly reported absence and three points for a no-call/no-show. The claimant had points prior to September 2, 2014. At the time of termination the claimant had 35 attendance points.

The claimant's mother suffered a work-related injury at her job in Chicago and the claimant called the employer to report he would be absent September 2 through September 5, 2014; was a no-call/no-show September 6, 2014; called and reported he would be absent September 8 through September 15, 2014; worked September 16, 2014; and called and reported he would be absent September 17 through October 7, 2014. The employer sent the claimant a letter September 30, 2014 informing him that he needed to provide documentation for his absences within 72 hours or face termination. The claimant went to meet with the employer October 8, 2014 but did not have any information excusing his absences and the employer terminated his employment for excessive absenteeism. The claimant did not request Family and Medical Leave, a leave of absence, or an accommodation

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 § 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 claimant accumulated 35 attendance points prior to his termination October 8, 2014. Even though it appears the claimant would have been eligible for Family and Medical Leave because he was taking care of his mom, he never approached the employer to ask for the leave of absence or to explain his extended absence and did not have any documentation from a physician stating that was the reason for his absence. The claimant was effectively gone for just over one month, without communicating the reason for his absence or requesting Family and Medical Leave. Consequently, the administrative law judge must conclude the claimant's final absence, in combination with his history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The October 30, 2014, reference 01, decision is affirmed. He 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

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