

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DERRICK L JOHNSON
Claimant

BERTCH CABINET MFG INC
Employer

APPEAL 15A-UI-14192-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/28/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Derrick Johnson (claimant) filed an appeal from the December 16, 2015 (reference 02) unemployment insurance decision that denied benefits based upon the determination Bertch Cabinet Mfg. Inc. (employer) discharged him for repeated tardiness in reporting for work after being warned. The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2016. The claimant participated on his own behalf. The employer participated through Human Resources Director Mitzi Tann, Department Leader John Henson, and Production Manager Jim Everett. Employer's Exhibits One through Five were received.

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: The claimant was employed full time as a Plant Mill Processing and Rough Mill Apprentice beginning on June 24, 2013 and was separated from employment on November 25, 2015; when he was discharged. The claimant was late to work the day he was discharged. He did not call his supervisors Department Leader John Henson or Production Manager Jim Everett to report that he would be late. On September 28, 2015, the claimant called the employer to notify it that he would be late for work but then never reported for work.

The claimant had previously received written warnings related to his attendance, the most recent on July 22, 2015. He was sick on numerous occasions but also tardy on February 12, March 23, and May 26, 2015. The claimant was put on notice that any further incidents of unexcused absenteeism would result in his discharge.

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 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). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

The claimant contends he fell on the morning of November 25, 2015 and was unable to report to work on time. He stated he took a narcotic that morning and was waiting for it to wear off before going to work. The claimant also testified he left a message for a truck driver to notify the employer of his absence. The employer denied the claimant reported his tardiness that morning. Its witnesses testified the claimant knew how to properly report his absence and had previously reported his absence to the correct person.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense, and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory, and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias, and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events more credible.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, 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 as it was not properly reported even if it was due to illness or injury. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The December 16, 2015 (reference 02) unemployment insurance 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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