

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMUEL MARTINEZ
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 15A-UI-12001-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Samuel Martinez (claimant) filed an appeal from the October 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination Tyson Fresh Meats, Inc. (employer) discharged him for excessive unexcused absenteeism after being warned. The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2015. The claimant participated on his own behalf. The employer participated through Community Liaison Sarah Ochoa. Employer's Exhibit 1 was 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 an hourly production worker beginning on July 28, 2015, and was separated from employment on October 3, 2015, when he was discharged. The claimant received an absentee notice on August 3, 2015 notifying him that he had accrued five attendance points under the employer's policy. The employer's attendance policy states at ten points an employee is discharged for excessive absenteeism.

The claimant was tardy to work on September 3rd and 5th because he overslept. He received a written letter on September 16, 2015 notifying him that he was at seven points. The letter also stated that further violations of the attendance policy could result in termination. On September 17, 2015, the claimant was tardy as he overslept. The claimant missed work on September 22, 2015 due to a non-work related illness that was properly reported to the employer. On September 30, 2015, the claimant was again tardy as he overslept. As the claimant had reached ten attendance points, he was discharged on October 3, 2015.

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).

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. The final absence, in combination with the claimant's history of unexcused absenteeism which included three additional unexcused absences due to personal responsibility in a one-month time period, is considered excessive. Benefits are withheld.

DECISION:

The October 20, 2015, (reference 01) 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

src/pjs