

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW J EEKHOFF
Claimant

IA SEL FAMRS/IA SEL FAMRS LP
Employer

APPEAL 15A-UI-12348-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/04/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Andrew Eekhoff (claimant) filed an appeal from the October 27, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the determination IA Select Farms (employer) discharged him for excessive unexcused absenteeism after having been warned. The parties were properly notified about the hearing. A telephone hearing was held on November 24, 2015. The claimant participated on his own behalf. The employer participated through Farm Manager Harry Sponenburg and Human Resources Specialist Craig Ward. Employer's Exhibit One 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 a department head beginning on November 8, 2011 and was separated from employment on October 9, 2015; when he was discharged. The employer requires all employees to call in before their shift to report if they are going to be absent for work. If an employee has more than six unplanned absences, he or she could be subject to discharge.

On October 6, 2015, the claimant reported to work after the start of his shift and told Farm Manager Harry Sponenburg that he was sick and going home. The claimant was experiencing pain in his ribs. He did not call before the start of his shift as he did not have access to a phone. He did not arrive at work before his start time to report his absence as he had not slept well due to the pain in his ribs and he overslept. This absence was the claimant's tenth unplanned absence for the year and the employer made the decision to terminate his employment. The claimant was aware that missing work on that day could result in his discharge.

The claimant went home sick on October 1, 2015. He was a no-call/no-show on September 30, 2015. He also missed work on March 19, April 2, May 4, May 15, May 28, August 4, and August 18, 2015. Neither party remembers why the claimant missed work on those days. The claimant received a written warning for excessive unexcused absenteeism on August 17, 2015 after he reached six unplanned absences.

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. While illness or injury can be excused under the Iowa Employment Security Act, it must be properly reported to be excused. The claimant failed to properly report his final absence as he did not notify the employer before the start of his shift 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 October 27, 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

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