

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YONG RIK
Claimant

APPEAL NO: 15A-UI-12812-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/11/15
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 November 12, 2015, 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 December 9, 2015. The claimant participated in the hearing with a certified Language Link interpreter. Jeaneth Ibarra, Human Resources Manager, participated in the hearing on behalf of the employer. The interpreter was disconnected several times and after approximately the fourth time the employer was not available when called back. Consequently, the hearing was continued to January 21, 2016. The claimant was not available at the two numbers he provided previously for the hearing and therefore the record was closed without further testimony.

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 January 20, 2014 to October 8, 2015. He was discharged from employment for exceeding the allowed number of attendance points.

The employer's attendance policy states that if an employee has a properly reported one day absence he will receive one point and if he has a no-call no-show absence he will receive three points. If an employee reaches ten points within a rolling calendar year his employment will be terminated.

The claimant was hired to work in Denison and transferred to Storm Lake September 18, 2015. At the time of transfer he had accumulated six points: He received one point November 3, 2014, for a properly reported illness; three points November 5, 2014, for a no-call no-show; one point November 6, 2014, for a properly reported illness; and one point February 10, 2015, for a properly reported illness.

After the claimant transferred to Storm Lake September 18, 2015, his mother died and the employer granted him three paid days off per policy plus a few additional days. He was off work for funeral leave September 28, 2015; off for personal business September 29, 2015, and off for funeral leave on September 30 and October 1, 2015. He did not request any further time off. The claimant was a no-call no-show October 2, 3 and 5, 2015, and received three points for each day. He called to report he would be absent due to personal business October 6, 2015. The claimant's supervisor called him October 6, 2015, and the claimant stated he had "too much going on to come in." He indicated he knew he should have been calling in or showing up for work since October 2, 2015. He returned to work October 7, 2015, and repeated that he had "too much going on October 2, 3 and 5, 2015," to call and report his absences. The employer subsequently suspended the claimant until the following day at which time his employment was terminated for exceeding the allowed number of attendance points as he had 16 points at the time of discharge.

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).

While the claimant suffered the loss of his mother and may have needed a few extra days to deal with that situation, he did not ask the employer for additional time off for bereavement. Instead, not only did he not report for work October 2, 3 and 5, 2015, he failed to call and report his absences on those dates and then called off October 6, 2015, for personal business. Had the claimant reported the October 2, 3 and 5, 2015, absences, the administrative law judge, as well as the employer, may have been able to overlook those absences due to the personal loss suffered by the claimant. Instead, he accumulated three no-call no-show absences which is

considered a voluntary leaving of employment under the law. Otherwise it can be considered misconduct if the claimant exceeds the allowed number of attendance points. The employer has established that the claimant's final four absences were not excused and were not due to properly reported illness. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

DECISION:

The November 12, 2015, 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/pjs