

discharged from employment due to a final incident of absenteeism that occurred on August 16, 2005. The claimant was last warned on August 15, 2005, that he faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on July 5 and August 15 as well as other unknown dates.

The claimant had already exhausted his four allotted sick leave days for the calendar year 2005 by July 2005, so any sick days he used thereafter were counted against him as unexcused absences. On August 15 the claimant called in and took the day off to deal with a family argument surrounding his brother's death on August 9, 2005. The claimant did not ask for time off to attend a funeral or for bereavement leave and his testimony makes clear that he was arguing with his siblings and wanted the day off. On August 15 he also asked for August 16 off to take care of family matters. The claimant was told he could not have August 16 off for vacation and was further warned that if he took it off without permission, it would be his third occurrence and would lead to his discharge. There is no evidence that the claimant could not have argued with his siblings during off work hours or taken care of family matters during non work hours.

#### 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.

Iowa Code section 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.

871 IAC 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 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 absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The September 6, 2005, 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.

tkh/kjw