

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT DEBELL
Claimant

APPEAL NO: 14A-UI-00940-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
CURRIES-GRAHAM
Employer

OC: 12/29/13
Claimant: Appellant (1)

Iowa Code § 96.5-2-a - Discharge for Misconduct
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Robert Debell (claimant) appealed an unemployment insurance decision dated January 16, 2014, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Curries-Graham (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 17, 2014. The claimant participated in the hearing. The employer participated through Mark Evers, Director of Human Resources.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production employee from July 16, 2012, through December 17, 2013. He was discharged from employment due to excessive absenteeism and pursuant to the progressive disciplinary policy. The progressive disciplinary policy is a four step process which includes a formal counseling, a written warning, and a suspension, before the employee is terminated on the final step. The employer's attendance policy provides that employees will receive a corrective action for attendance if they have three tardies in a 12-month period.

The claimant received a formal counseling on February 5, 2013, after he was late three times. He received a written warning on September 26, 2013, for 16 absences on the following dates: February 7, February 10, February 13, February 20, March 5, March 13, March 14, March 26, April 2, April 8, April 11, April 14, April 17, August 20, August 21 and September 11. The claimant also received a three-day suspension and final warning on the same date for a no-call/no-show on August 15, 2013. He knew his job was in jeopardy and was discharged after his third tardy on December 7, 2013. The claimant was also tardy on September 16, 2013, and September 18, 2013, and these incidents were not included in the written warning on September 26, 2013.

The claimant testified that he was off work for 30 to 40 days due to a medical condition but these absences were not the basis for the claimant's termination for attendance.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on December 17, 2013, for 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. 871 IAC 24.32(7).

The Iowa Supreme Court in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. The Court in the case of *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984) held that absences due to matters of "personal responsibility such as transportation problems and oversleeping are considered to be unexcused."

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 denied.

DECISION:

The unemployment insurance decision dated January 16, 2014, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs