

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTWON FLOWERS

Claimant

APPEAL NO: 15A-UI-09434-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 08/02/15

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 August 20, 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 September 9, 2015. The claimant participated in the hearing. Kristi Fox, Human Resources Clerk, participated in the hearing on behalf of the employer.

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 July 29, 2015 to August 1, 2015. He was discharged from employment due to a final incident of absenteeism that occurred on July 25, 2015.

The employer uses a no-fault, point-based attendance policy and employees are terminated upon reaching 10 points in a rolling calendar year. An employee receives one point for a full day absence if he calls in the required 30 minutes prior to the start of his shift; three points if he fails to call on time or is a no-call no-show; and one-half point for an incident of tardiness or leaving early. Points drop off after one year. The employee receives computer generated written warnings upon reaching three points, six points; and nine points.

The claimant was tardy November 3 and December 12, 2014 and January 8, 2015, due to transportation issues and received one-half point for each incident; he was absent due to illness January 12 and January 19, 2015, and received one point for each incident; he was tardy March 4, 2015 and absent March 23, 2015, due to transportation issues and received one-half point for the incident of tardiness and one point for the absence; he was tardy May 15, 2015, and received one-half point; he was absent May 21, 2015, due to transportation issues and received one point; he was absent May 22, 2015, due to illness and received one point; he was

absent June 8, 2015, due to transportation issues and received one point; he was absent July 24, 2015, due to transportation issues and received one point; and he was a no-call no-show July 25, 2015, and received three points for a total of 12.5 points. The claimant received written warnings from his supervisor upon reaching three, six and nine points.

The employer offers employees a birthday holiday and a floating holiday. According to the union contract, the birthday holiday must be used within 60 days of the employee's birthday. The claimant's birthday is May 19. He used his floating holiday July 16, 2015, and wanted to use his birthday holiday, which he needed to use by July 19, 2015, for his July 25, 2015, absence. He stated he had an agreement with his supervisor on July 6, 2015, that he would use his birthday holiday July 25, 2015, so he could attend a family reunion in Chicago. July 25, 2015, was a Saturday and the employer does not know whether it is going to work Saturdays until noon on the Friday preceding the Saturday the employer works.

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).

The claimant accumulated three absences due to properly reported illness but accumulated five incidents of tardiness and four absences due to transportation issues between November 3, 2014 and July 24, 2015, for a total of nine of his final 12.5 points. The last three points were issued for a no-call no-show absence July 25, 2015. The claimant argues his last absence should not have counted because he used his birthday holiday. The claimant's birthday holiday by contract, however, was required to be used by July 19, 2015. While the claimant maintains he made arrangements with his supervisor July 6, 2015, to take his birthday holiday Saturday, July 25, 2015, the employer noted that it does not know or announce whether it is working

Saturdays until the Friday before at noon and consequently the claimant could not have requested July 25, 2015, off on July 6, 2015, because the employer did not know it would be working Saturday, July 25, 2015, when he states he made his request July 6, 2015. The claimant chose to use his floating holiday July 16, 2015, instead of using his birthday holiday at that time which would have been within the required 60 days from the date of his birthday. Additionally, the employer does not overrule supervisors when they choose to assess or not assess points to employees. If the claimant's supervisor, with whom he states he had a good working relationship, simply made a mistake with regard to the dates as the claimant indicated, she could have decided not to give the claimant his final three points. As it stands, she did assess him three points for his absence July 25, 2015.

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. Therefore, benefits must be denied.

DECISION:

The August 20, 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