

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVONTAE D SEAY
Claimant

HENNIGES AUTOMOTIVE IOWA INC
Employer

APPEAL 19A-UI-04949-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/26/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 12, 2019, (reference 01) decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2019. Claimant participated. Employer was to participate through Erin Wagner, Human Resources Generalist, but she did not answer the telephone when called to begin the hearing. Official notice was taken of agency fact-finding records.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a laborer beginning on March 26, 2018 through May 26, 2019, when he was discharged. Claimant was discharged for obtaining too many attendance points. Claimant had been given a copy of the employer's handbook and policy manual and knew that if he reached 48 points he was subject to discharge. In October 2018, the claimant was at 42 attendance points. Since he had accumulated points so quickly he went straight from step one to step three in the disciplinary process. Claimant was warned at that time that he could not accumulate any more points for a year. On May 23, the claimant was twenty-six minutes late to work because he fell asleep on his couch prior to going to work. When he woke up he called the employer who told him to come into work. Claimant was then sent home while the employer decided what to do. Claimant was discharged on May 26 for receiving too many attendance points for excessive absenteeism.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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 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 June 12, 2019, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs