

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK S BRADY
Claimant

APPEAL NO. 07A-UI-10299-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF CEDAR RAPIDS
Employer

OC: 09-18-07 R: 03
Claimant: Appellant (2)

Iowa Code section 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 31, 2007, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on November 27, 2007. The claimant did participate. The employer did participate through Debbie Chamberlin, Risk Control Manager.

ISSUES:

Was the claimant discharged for work-related misconduct?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was assigned by Manpower to work at MidAmerican Energy as a meter reader beginning June 18, 2007 through October 2, 2007 when he was discharged. The claimant's car broke down on October 1 and was not fixed until October 4. The claimant was discharged from MidAmerican for missing work and having unreliable transportation. Mr. Jones, an employee of the local Manpower office in Ottumwa told the claimant that his assignment at MidAmerican had ended on October 2. The claimant was offered another assignment which he subsequently accepted and began on October 24.

The claimant's car was not working for only three days. The claimant had no warnings that his job was in jeopardy due to attendance issues and to his recollection he had only missed one other day between June 18 and October 2 and that was to attend a doctor's appointment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 claimant missed one day of work when his car broke down. While absences due to transportation problems are not excused, the record does not show that the claimant had any attendance issues or warnings prior to missing one day when his car broke down. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. One unexcused absence without a demonstrable history of other unexcused absences or warning is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

The claimant's car was broken for only three days. The claimant did not lose his transportation for any significant length of time and it is reasonable to allow some time for the repair to take place. The claimant was willing to make arrangements including renting a car to insure he would be at work but was discharged for one day of absence. The claimant is able to and available for work. Accordingly, benefits are allowed.

DECISION:

The October 31, 2007, reference 05, decision is reversed. The claimant was discharged from employment for no disqualifying reason. The claimant is able to and available for work effective October 1, 2007. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs