

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROGER D KOLTHOFF
Claimant

MANPOWER INC OF DES MOINES
Employer

APPEAL 15A-UI-13034-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/25/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 16, 2015 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2015. The claimant participated personally. The employer participated through Chad Wood, Branch Manager.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed on assignment full time as a laminator for Certainty Gypsum and was separated from employment on January 5, 2015; when he was removed from the assignment. The claimant was made aware at the time the assignment ended that he was no longer eligible for future assignments.

The claimant was discharged from the employer due to excessive, unexcused absenteeism. The employer's policies require the claimant to call the employer directly prior to missing a scheduled shift, and to leave a voice mail or speak with someone live. The claimant missed one week of work from November 10 through 14, 2015 and did not make contact with the employer. The claimant missed work due to personal reasons. He was issued a written warning on November 18, 2015; in response to the absences. The final incident occurred on December 29 and 30, 2015; when the claimant again failed to report to work or call off to the employer. The claimant failed to call the employer because he went to Sioux City for court and to prepare for an anticipated return to federal prison.

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 § 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that the claimant was warned on November 18, 2014 that further unexcused absences could result in termination of employment and the final absence was not excused. The claimant then had two consecutive no-call/no-shows on December 29 and 30, 2014; when he failed to go to work or properly call off. The reason for the claimant's absences was related to a court appearance and expected return to prison. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The November 16, 2015 (reference 01) unemployment insurance 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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