

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD M ROE
Claimant

APPEAL NO. 17A-UI-01359-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

OC: 01/08/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Gray Transportation (employer) appealed a representative's January 30, 2017, decision (reference 01) that concluded Todd Roe (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 28, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Darrin Gray, President, until he disconnected. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on January 11, 2016, as a full-time tire technician. The claimant signed for receipt of the employer's handbook on January 12, 2016. The policy indicates that the penalties for unexcused absences will be a verbal warning for the first offense, a written warning with probation period for the second offense, a written warning with a two-day suspension for the third offense, and termination for the fourth offense. The company reserves the right to deviate from the penalties.

The claimant was absent on November 28 and December 19, 2016. On an unknown date employer talked to the claimant about unknown tardiness and absences. On December 21 and 22, 2016, the claimant properly reported his absences and provided a doctor's note to the employer. On December 28, 2016, the claimant did not properly report his absence prior to the start of his shift. He did call in after his start time to say he was absent due to illness. On December 29, 2016, the claimant did not appear for work. At 11:00 a.m. the claimant sent a text to his employer asking if he could keep his job. The employer told the claimant he could not.

The claimant filed for unemployment insurance benefits with an effective date of January 8, 2017. The employer participated personally at the fact-finding interview on January 27, 2017, by Darrin Gray.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer established that it discussed the claimant's absences with him but it did not provide information that the claimant was warned that further unexcused absences could result in termination of employment.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer did not prove that it had previously warned the claimant about the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 30, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs