

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN MORELAND
Claimant

APPEAL NO. 06A-UI-11822-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PROCESSING INC A COOPERATIVE
Employer

OC: 11-05-06 R: 01
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 November 29, 2006, 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 December 27, 2006. The claimant participated in the hearing. Carl Parker, Plant Manager, and Jessica Meyer, Employer's Attorney, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

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 Extraction Operator A for Ag Processing Inc. from July 23, 2002 to November 2, 2006. On June 20, 2006, the claimant was scheduled to begin work at 7:00 a.m. When he did not call or show up by 8:00 a.m., his supervisor called him and left a message asking him to call the employer. The claimant had not called by 8:30 a.m., so the employer called in another operator to work the claimant's shift. The claimant called the employer at 8:45 a.m. and the employer told him to stay home because his shift was covered but did issue a verbal warning in writing to the claimant June 21, 2006 (Employer's Exhibit One). On July 10, 2006, the claimant failed to report for his 7:00 a.m. shift. His supervisor noticed him sleeping in the back of a car in the parking lot and tried several times to wake him but was unable to do so and consequently another operator had to be called to work the claimant's shift. When the claimant woke up he left without speaking to his supervisor. The employer issued a written warning and three-day suspension to the claimant for being tardy or absent without notification, sleeping on the premises and leaving without contacting his supervisor (Employer's Exhibit Two). On October 29, 2006, the claimant called at 10:10 a.m. for his 7:00 a.m. shift. He testified he had been off work October 28, 2006, because his grandmother was in the hospital and that she died that evening. He planned to work October 29, 2006, but overslept. He was aware his job was in jeopardy and after suspending the claimant for three days, the employer terminated his employment for his third violation of the attendance policy within one year.

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 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 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 November 29, 2006, 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/kjw