

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ULANDUS G ROSS

Claimant

APPEAL NO. 16A-UI-12537-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC

Employer

OC: 10/16/16

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ulandus Ross (claimant) appealed a representative's November 17, 2016, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Pilot Travel Centers (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 12, 2016. The claimant participated personally. The employer participated by Greg Holliday, General Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit 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 March 29, 2016 as a part-time deli production person. The claimant signed for receipt of the employer's handbook on March 30, 2016. The employer has a policy that requires employees to notify the employer of an absence two hours prior to the start of the shift. On March 4, 2016, the claimant did not appear for work or notify the employer of his absence. The employer sent a text to the claimant. The claimant said he just woke up and did not feel well. From the text, the employer thought he would come to work later but the claimant did not appear. The employer sent a text to the claimant saying his absence was a failure to appear without notice.

The claimant's son's mother was placed in jail for a short time. The claimant was responsible for childcare while the mother was incarcerated. The claimant did not look for commercial childcare. On October 11 and 13, 2016, the claimant did not appear for work or notify the employer of his absence. On October 13, 2016, the employer called the claimant after the start of his shift. The claimant assured the employer he would be at work on October 14, 2016.

On October 14 and 16, 2016, the claimant did not appear for work or notify the employer of his absence. On October 16, 2016, the employer called the claimant after the start of his shift. The claimant assured the employer he would be at work on October 17, 2016. The employer told the claimant that it was the last straw and the claimant would be terminated if he did not appear for work in the future. On October 17, 2016, the claimant properly reported his absence due to lack of childcare. On October 18, 2016, the claimant called to report his absence after the start of his shift. On October 18, 2016, employer terminated the claimant for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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 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 representative's November 17, 2016, decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been

paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs