

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE W KRUM

Claimant

APPEAL NO. 07A-UI-11387-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAMSON FABRICATION INC

Employer

**OC: 11/04/07 R: 04
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 3, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 28, 2007. Claimant participated. Employer participated through Gene Crowe. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits and, if so, whether he is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time machine operator from May 14, 2007, until November 2, 2007, when he was discharged. Claimant was last absent on November 1 when he called his supervisor to tell him he would be late because he was working on his vehicle. Claimant did not report for the remainder of his shift or notify employer of the additional absence period. His supervisor either did not allow claimant to make up the time by working the day after Thanksgiving or did not have the authority to do so. This incident exhausted his points available under employer's system. Employer notified claimant of his point status on each paycheck and claimant acknowledged receipt of the attendance policy in the handbook on May 10, 2007. (Employer's Exhibit 1) Claimant had some absences related to vacation and sick leave but was also absent related to transportation issues on June 5, when he was pulled over for driving without a license and on September 12, when he missed work after spending the night pulling his girlfriend's vehicle out of the ditch after she was driving while intoxicated.

The claimant has received unemployment benefits since filing a claim with an effective date of November 4, 2007 for the seven weeks ending December 22, 2007.

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 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Regardless of employer's point system, which is irrelevant to the application of unemployment insurance rules, the employer has established that the claimant was notified by the handbook and on each paycheck of the status of his points and that exceeding the specified number of points would result in termination of employment. His final absence is considered unexcused because he was tardy related to transportation trouble and because he failed to report for the remainder of his shift or notify employer of the situation. The other two absences related to transportation problems are also considered unexcused. With or without employer's point system, the final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

The administrative law judge further concludes claimant has been overpaid benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The December 3, 2007, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$1,561.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw