

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID M CLARK
Claimant

APPEAL NO. 12A-UI-07039-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINMAN GLASS INC
Employer

OC: 11/27/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

David M. Clark filed a timely appeal from an unemployment insurance decision dated June 13, 2012, reference 04, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa July 31, 2012 with Mr. Clark participating. Merwyn Kinman and Doug Kinman participated for the employer, Kinman Glass, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

David M. Clark was employed as a glass installer by Kinman Glass, Inc. from April 24, 2012 until he was discharged May 22, 2012. He was absent May 21, 2012. He called the company's shop on East 14th Street and was told to call Merwyn or Doug Kinman at the location where Mr. Clark worked, 2660 – 100th Street, Urbandale, Iowa. Mr. Clark did not do so. May 21, 2012 was a Monday. Mr. Clark was also absent on May 14, 2012 because his daughter was ill. He reported that absence in accordance with company policy. He had been tardy on at least four occasions during his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment.

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.

Excessive, unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to personal illness or family illness is excused, provided the employee properly reports the absence to the employer. See Higgins and 871 IAC 24.32(7). Absence for matters of personal responsibility are considered unexcused whether or not the employer is notified.

Mr. Clark acknowledged being tardy on one occasion. This testimony was countered by the testimony of the employer witnesses who had observed Mr. Clark being tardy on multiple occasions. The testimony was plausible and consistent. Four instances of tardiness and an absence without contact in the space of four weeks is sufficient to establish excessive, unexcused absenteeism. Benefits are withheld.

DECISION:

The unemployment insurance decision dated June 13, 2012, reference 04, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs