

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN A COTHER
Claimant

APPEAL NO. 16A-UI-11627-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 09/25/16
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Menard (employer) appealed a representative's October 20, 2016, decision (reference 01) that concluded Nathan Cother (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 November 10, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Dale Dickman, General Manager, and Matthew Starkson, Human Resources Coordinator. The employer offered and Exhibit One 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 December 31, 2014, as a full-time building materials sales. The claimant signed that he read the employer's Attendance Policy on December 31, 2014. The policy indicates that the claimant will be terminated if he receives ten points in a rolling 90-day calendar period.

The employer issued the claimant warnings for attendance on June 11, 23, July 19, and June 29, 2016. It issued the claimant a warning and three-day suspension for attendance issues on August 12, 2016. The employer notified the claimant each time that further infractions could result in termination from employment. As of August 12, 2016, the claimant had accumulated nine attendance points. The claimant was absent two days, did not give the employer a reason for the absence, and accumulated six points. Three points were for tardiness.

On August 26, 2016, the claimant properly reported he was absent and did not offer a reason for his absence. He accumulated three points for his absence. On August 30, 2016, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of September 25, 2016. He received no benefits after his separation from employment. The employer participated personally at the fact-finding interview on October 19, 2016, by Matthew Starkson.

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 October 20, 2016, decision (reference 01) is reversed. 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/pjs