

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER CARPENTER
Claimant

APPEAL NO. 10A-UI-03651-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMVC EMPLOYEE SERVICES LLC
Employer

**Original Claim: 11-01-09
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 February 26, 2010, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 23, 2010. The claimant participated in the hearing. Noelle Tyson, Human Resources Director, and Keith Rohe, Barn Manager, participated in the hearing on behalf of the employer.

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 herdsman for AMVC Employee Services from December 24, 2009 to January 26, 2010. He was scheduled to work from 5:00 a.m. to between 2:30 and 5:00 p.m. Employees are expected to call the employer to report any absences by 5:00 a.m. On January 20, 2010, the claimant called the employer before 5:00 a.m. because he was going to be absent the beginning of the day because he had to take a class. On January 21, 2010, he called Human Resources Director Noelle Tyson at 1:58 p.m. and said he was on his way to Indiana for a family emergency. Ms. Tyson was unaware of the claimant's schedule and told him to call Barn Manager Keith Rohe. Ms. Tyson did not approve his absence and the claimant did not call Mr. Rohe that day. He testified he was on the road and did not have time to pull over and call the employer prior to 1:58 p.m. or to call Mr. Rohe. On January 22, 2010, the claimant tried to call Mr. Rohe at 12:17 p.m. At 5:22 p.m. Mr. Rohe returned his call and the claimant stated he would be home January 24, 2010, and would call him back at that time. Mr. Rohe told the claimant he needed to tell the employer in advance if he needed time off. On January 24, 2010, the claimant called Mr. Rohe's cell phone and left a message stating he needed to find a new place to live because his landlord sold his house. He did not ask for time off and consequently Mr. Rohe expected the claimant to report for work at 5:00 a.m. January 25, 2010. The claimant did not call or show up for work January 25, 2010, and Mr. Rohe attempted to call him several times. The claimant did not call until 6:20 p.m. He

said he was snowed in but all other employees made it to work that day. Mr. Rohe told the claimant his absences had been unexcused and, as a new employee, he could not miss that many days. The claimant called in January 26, 2010, and Mr. Rohe told him the employer no longer needed his services.

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). While the claimant believes his absences should not be considered no-call, no-shows, because he called in later in the day, the employer's policy clearly states employees must call in to report an absence by 5:00 a.m., which it appears the claimant was aware of, as he called before 5:00 a.m. January 20, 2010, to state he would not be in that morning. The call in must be done in a timely manner, not whenever the employee feels like calling. Although he also testified he could not call the employer January 21, 2010, because he was driving to Indiana because his grandmother was very ill, he did have a cell phone with him and could have taken a moment to call the employer before 5:00 a.m. and at least to call Mr. Rohe after stopping to call Ms. Tyson. He stated he left Mr. Rohe a message January 22, 2010, after leaving the hospital in Indiana, going to the family farm and taking a nap. He assumed Mr. Rohe would know he would not be in January 24, 2010, because he told him his landlord sold the house he was living in, but he did not tell Mr. Rohe he would not be in, nor did he call Mr. Rohe January 25, 2010, because again he assumed Mr. Rohe would know that he would be absent due to the weather. The claimant's absences were unexcused because he failed to properly report them when he had the ability to do so. The final absence, in combination with the claimant's history of absenteeism with this employer, is considered excessive. Therefore, benefits are denied.

DECISION:

The February 26, 2010, reference 04, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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