

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JULIUS MONTGOMERY**  
Claimant

**RYDER INTEGRATED LOGISTICS INC**  
Employer

**APPEAL 14A-UI-07286-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/15/14**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 7, 2014 (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2014. Claimant was not available at the number provided when called twice, did not return the administrative law judge's message and did not participate. Employer participated through Customer Logistics Coordinator Jordan Van Ersvelde and Customer Logistics Manager Dave Simcox.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a material handler from April 2013 and was separated from employment on May 28, 2014. On May 21 he was scheduled at 6:00 a.m. and clocked in at 7:04 a.m. because he was "running late." He was coached verbally on October 7, 2013 about tardiness on October 3. He had a formal coaching on October 29, 2014 about an absence on October 17. He had been warned in writing on February 28, 2014 about tardiness on February 21, 2014. He had a second-written warning on March 17, 2014 about a no-call/no-show absence on March 8, 2014 and was reminded to contact Simcox or his back up directly. Simcox issued a final written warning on April 17, 2014 about tardiness on April 7, 2014. His other absences were covered by paid time off (PTO).

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 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 in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The July 7, 2014 (reference 01) unemployment insurance decision is reversed. 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.

**REMAND:**

The overpayment and fact-finding participation issues pursuant to Iowa Code § 96.3(7) and Iowa Admin. Code r. 871-24.10 respectively, although clearly set out on the hearing notice, are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination because claimant did not participate in this hearing that addressed the separation from employment.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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