

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A CLARK
Claimant

APPEAL NO. 12A-UI-10880-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 08/12/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

John Clark (claimant) appealed a representative's August 30, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Menard (employer) for repeated tardiness in reporting for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 3, 2012. The claimant participated personally and through Michael Edwards, former coworker. The employer participated by Travis Spiker, first assistant general Manager.

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 March 31, 2009, as a full-time assistant wall coverings department manager. The claimant received the employer's handbook. The handbook states that an employee who accumulates ten attendance points will be terminated. In 2009, the claimant was tardy due to personal issues with his wife. No warning was issued.

Around June 23, 2012, a manager thought it would be funny to change established schedules a day or two before employees were supposed to appear. The claimant was supposed to have the weekend off through Monday at noon. He was issued a written warning and five attendance points for not appearing early on Monday morning. On August 12, 2012, the claimant overslept. The employer assessed the claimant five attendance points and terminated him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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 when and why the employee is unable to report to work. The employer did not establish that the claimant was warned that further unexcused absences could result in termination of employment. The claimant had only three absences in three years. One of the absences was the employer's fault. Two absences in three years is not excessive. The employer did not furnish sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 30, 2012 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw