

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA E HOBBS
Claimant

MUSCATINE LOGISTICS LLC
Employer

APPEAL 15A-UI-06534-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/22/15
Claimant: Appellant (2)

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 claimant filed an appeal from the May 29, 2015, (reference 06) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 8, 2015. Claimant participated. Employer responded to the hearing notice instructions but was not available at the number provided when the hearing was called and did not participate. The administrative law judge took official notice of the administrative record, including fact-finding and supplemental documents.

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 warehouse truck driver from September 27, 2012, and was separated from employment on May 20, 2015, when he was discharged. His last day of work was May 9, 2015, when he was suspended pending investigation. He missed work from Saturday, May 2, and Monday, May 4 through Saturday, May 9, 2015. He later told the employer it was because his maternal grandmother “Gladys Hobbs” died in Arizona. He did not go to the funeral but provided the employer with a “funeral” pamphlet. The employer investigated and found that a Michael Hobbs of Story City died in 1970 and his mother was listed as Gladys Buerkley. It also found information about the death of Gladys Buerkley in Arizona in 2007. He has no knowledge of missing work in 2007 due to the death of a grandparent. His paternal grandmother survives. Both grandfathers have died. The employer asked for more information about the funeral home but claimant did not provide it since he did not know where it was and could not reach his aunt who lives in Tucson, Arizona where the funeral was held. His prior absences were related to his wife’s chronic medical condition, his biological father died in January 2015, and he was absent three days for an arrest and the charges were later dropped.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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 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). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Claimant is not convincing since his overall testimony was rather vague and he said it was his *maternal* grandmother who died and her last name is the same as his, which is unusual for his grandmother's or mother's generation of women to have kept their "maiden" or family name. Further, he claimed not to recognize the name Buerkley even though the "funeral program" he presented contained that name. Finally, there was no obituary and the funeral program does not contain any details about the place or time of the funeral or memorial service, which is customary in such documents. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to 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 as the reason for the five-day absence is not genuine. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive.

DECISION:

The May 29, 2015, (reference 06) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/mak