

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACK L RILEY
Claimant

FRENCH WAY CLEANERS/FURRIERS
Employer

APPEAL 15A-UI-10092-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/16/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 1, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in person hearing was held on September 24, 2015 in Des Moines, Iowa. Claimant participated. Employer participated through Harold Cross, Bookkeeper. Employer's Exhibit One was entered and received into the record. Claimant's Exhibits A and B were entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected 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 driver/presser beginning in May 5, 2003 through August 11, 2015, when discharged. The claimant had a long history of being absent from work or calling in late to work. The claimant was required to call in within two hours of the start time of his shift to report whether he would or would not be at work. The claimant knew how to properly report his absences and had done so on occasion. The employer gave the claimant extra chances but when his incidents of no-call/no-show did not cease, they began to write him up and to move through the disciplinary process. The employer followed their own union contract and the claimant did not file a grievance about any of the disciplinary issues including the discharge. . The claimant was a no-call/no-show for work on February 18, and 23, 2015. On February 24 he called in after noon but was to be to work at 6:00 a.m. His absence was not properly reported. On April 13, he called in late in the day and did not follow the proper reporting policies. The claimant was a no-call no-show for three days on April 20, 21 and 22. When he returned to work on April 24 he presented a doctor's note that had been altered. The unaltered note presented at the hearing indicated the claimant should have returned to work on April 22, when he was a no-call/no-show for work that day. The claimant was given a written warning on April 24, 2015.

The claimant's attendance improved for a while then slipped again when he was a no-call/no-show for work on June 1, 2015. He was given his final written warning at that time. His write up specifically said, "[a]ny additional offense will be grounds for discharge." Employer's Exhibit One. On August 5 the claimant was to be to work at 6:00 a.m. but did not call the employer until 5:30 p.m. that night to report his absence. The employer believed the claimant was slipping right back into his old pattern of poor attendance.

On August 10 the claimant was to be to work at 4:30 a.m. When he had neither called nor shown up by 5:00 a.m. the employer called him. He reached his voice mail and left a message. The claimant called back shortly after the employer left the message and said he had overslept but would be right into work. The claimant never showed up for work nor did he call back to tell anyone he was not coming to work. He was discarded on August 11 for violating the attendance policy.

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 Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Absences due to **properly reported illness** or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant's absences were not properly reported.

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. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The September 1, 2015, (reference 01) decision is affirmed. The 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css