

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG A SHOWERS
Claimant

APPEAL NO. 13A-UI-10825-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUNNINGHAM INC
Employer

OC: 08/11/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 11, 2013, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 16, 2013. Claimant participated. Employer participated through human resource manager Glen Burgett. Employer's Exhibit 1 (fax pages 3 – 7 and 13 – 19) was received.

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 labor mechanic and was separated from employment on August 13, 2013. The claimant called coworker Michael and immediate supervisor Mike Caves on August 5, to report he was incarcerated. On August 9 he reported he would not be at work because of transportation issues. He had asked for time off on August 12, 2013, for a court appearance, but the actual court date was not until August 15. August 12, was his last absence.

The first written warning about attendance was on May 3, 2013. He had been warned a second time in writing on July 29, 2013, about absenteeism. He was also absent on February 4 (unknown reason); March 4 (ill); 7 (court appearance for no-contact order against him); March 11 (ill); 21 (court appointment at 2:15 p.m., no transportation for partial day of work); 25 (court appearance at 1:30 p.m. for OWI); April 1 (moving), 12 (unknown), 18 (unknown), 24 (unknown), 25 (unknown), and 29 (court appearance for custody issue). All days absent in April were recorded as personal days without advance notice. Claimant argued he reported them to Caves. Caves was not available to participate in the hearing to offer rebuttal testimony because he was "working in the field" at the time of the hearing and Burgett did not make him available. His shift started 7 a.m. and ended at 3:30 p.m. On days with court appearances, he did not work a partial day because he had no driver's license and no transportation. Claimant was absent on May 9 (court hearing for no-contact order against him); June 3 (ill); 21 (legal issues);

26 (court appearance for driving while revoked); July 23 (no-call/no-show); and 26, 29 and 30 (ill). Caves asked him to provide a medical excuse but he did not because he said he was living in a tent in a state park and could not afford the co-payment. He did not tell the employer he could not afford the co-pay. The employer provided claimant with medical insurance and excuses absences with a medical note.

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.

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 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). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

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. Since the employer did not provide rebuttal evidence about claimant reporting court appointments in advance, those dates are excused to the extent of the necessity to be absent for the appointment and reasonable travel time. That claimant did not have transportation to work a partial shift was his responsibility. The absences related to properly reported illness are considered excused, even though they were excessive. The lack of medical excuse for three-day absence presents a difficult decision because the employer would excuse the absences with a medical excuse, but the claimant could not afford the co-pay for the insurance provided by the employer. Given the frequency of the absences related to illness and notice that his job was in jeopardy due to absenteeism, it would have behooved the claimant to seek medical evaluation at least when the employer specifically requested the documentation. Since claimant did not advise the employer he could not afford it or seek assistance otherwise, the

absences are considered unexcused. The employer has credibly established that claimant was warned that further unexcused absences could result in termination of employment and the final absence for an erroneous court date was not excused. The final absence, in combination with claimant's history of unexcused absenteeism (no-call/no-show, lack of transportation, absences beyond the court appointments, moving), is considered excessive. Benefits are withheld.

DECISION:

The September 11, 2013, (reference 01) decision is affirmed. 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/pjs