

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

PROPHET KM LIVINGOOD

Claimant

APPEAL NO: 19A-UI-05718-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 05/26/19

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 14, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 29, 2019. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on June 14, 2019. The claimant received the decision June 26, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 24, 2019. The appeal was not filed until July 18, 2019, which is after the date noticed on the disqualification decision. Because the claimant did not receive the decision before the due date the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time assembler for Whirlpool Corporation from August 2018 to August 9, 2018. He was discharged from employment due to a final incident of absenteeism that occurred on August 9, 2018. The claimant carpooled with other employees to his interview and to orientation. The carpool participant then moved to Cedar Rapids and notified the claimant it could no longer provide him with rides. The employer notified the claimant that due to his attendance his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The claimant testified he lost his ride and was absent from work as a result. The employer terminated his employment due to attendance issues. While the claimant contends the loss of his ride was through no fault of his own and that may be true, it is his responsibility to provide his own transportation to the workplace. Absences due to transportation issues are not excused. The claimant's final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The June 14, 2019, reference 01, decision is affirmed. The claimant's appeal is timely. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn