

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD R DALE
Claimant

APPEAL NO. 09A-UI-19485-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MAREKTING CO
Employer

OC: 11-15-09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 17, 2009, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on February 8, 2010. The claimant did participate. The employer did participate through Billie Petry, Store Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cashier/cook part time beginning October 29, 2008 through November 16, 2009 when he was discharged.

The claimant was to work on November 16 at 2:00 p.m. He made arrangements to have Ryan Mattix work for him from 2:00 p.m. until 4:00 p.m. The claimant did not show up for work at 4:00 p.m. nor did he call Ryan or the employer to tell them that he would be late to work. Ryan was paid overtime when the claimant did not show up at 4:00 p.m. to relieve him. Ms. Petry called the claimant when he did not show up for work to relieve Ryan. Ms. Petry told the claimant that he was not allowed to have Ryan work from 4:00 p.m. until 6:00 p.m. for him because that would put Ryan into overtime status. Additionally, Ryan had not agreed to work until 6:00 p.m.

The employer was not happy that the claimant had been asking for so much time off work to care for his children. The claimant had not been warned about his attendance and had no warning that his job was in jeopardy if he had one more instance of unexcused absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The claimant was entitled to fair warning that the employer was no longer going to tolerate his performance and conduct that is his failure to work his scheduled hours. Without fair warning, the claimant had no way of knowing that there were changes he needed to make in order to preserve his employment. A failure to report to work without notification to the employer is generally considered an unexcused absence. One unexcused absence without a demonstrable history of other unexcused absences or warning is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The December 17, 2009, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css