

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY L JOHNS

Claimant

UNITED STATES CELLULAR CORP

Employer

APPEAL NO. 14A-UI-04133-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/23/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated April 11, 2014, reference 01, that held claimant was not discharged for misconduct on March 19, 2014 and benefits are allowed. A hearing was held on May 8, 2014. The claimant participated. Tyson Allen, Store Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on October 15, 2012 and last worked as a part-time retail wireless consultant on March 19, 2014. The claimant received the employer attendance policy.

Claimant is a military veteran and he had been treated for PTSD-like symptoms and insomnia. His lack of sleep caused him to be late to work soon after employment and it progressed to a written final warning in 2013.

Claimant was able to get his insomnia under control for a period after the final warning but the condition resulted in a pattern of tardiness on four occasions from February 17, 2014 through March 8, 2014. He got a written warning and asked to work late evening work shifts in order to get to work on time.

The employer issued claimant a final written warning for being late to work on March 9, and he was put on notice he could be terminated. He was late to work on March 16 and terminated for repeated tardiness on March 19.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on March 19, 2014, for excessive "unexcused" absenteeism/tardiness.

It is apparent claimant suffered from a chronic insomnia condition that he battled throughout the course of employment. He made a concerted effort to control it after getting a final warning but relapsed.

Although the employer decided to terminate most probably on the basis it could no longer tolerate the tardiness, it is based on a medical condition that constitutes a justifiable excuse and negates misconduct.

DECISION:

The decision of the representative dated April 11, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on March 19, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs