

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CARY J SUMMERS
Claimant

APPEAL NO. 18A-UI-07142-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

OC: 01/07/18
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

CNH America (employer) appealed a representative's June 22, 2018, decision (reference 01) that concluded Cary Summers (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 20, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by David Jacobs, Human Resources Generalist. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 2, 2012, as a full-time heavy assembler working Monday through Thursday. The claimant received the union contract which contained the attendance policy. Employees who accumulated eight or more attendance points in a rolling calendar year were subject to termination.

On December 7, 2016, February 7, March 2, 9, July 5, October 17, 2017, and January 30, 2018, the employer issued the claimant a warning for accumulating attendance points. Also on January 30, 2018, the employer issued the claimant a four-day suspension for attendance issues. The employer notified the claimant that further infractions could result in termination from employment.

The employer terminated the claimant on May 29, 2018, for excessive absences and accumulating eight attendance points. During the previous year, the claimant properly reported his absence due to illness on eight days. One day he properly reported his absence for

personal reasons. Three of his absences he failed to properly report. On May 24, 2018, the claimant's last absence, he did not appear for work or notify the employer of his absence.

The claimant filed for unemployment insurance benefits with an effective date of January 7, 2018. He received no unemployment insurance benefits after his separation from employment. The employer provided the name and number of David Jacobs as the person who would participate in the fact-finding interview on June 21, 2018. The fact finder called Mr. Jacobs but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided no documents for the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified 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 representative's June 22, 2018, decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs