

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BOYD R ELLERBRUCH
Claimant

APPEAL NO: 18A-UI-10959-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 10/07/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 1, 2018, 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 November 21, 2018. The claimant participated in the hearing. Trevor Krog, Second Assistant General Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is 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: The claimant was employed as a full-time wall coverings sales team member for Menard, Inc. from May 27, 1997 to October 9, 2018. He was discharged from employment due to a final incident of absenteeism that occurred on October 5, 2018.

Under the employer's attendance policy, employees may accumulate nine points within 90 days. Employees are assessed three points for an unexcused absence; zero points for an absence accompanied by a doctor's note; five points for a no-call/no-show; one point for an incident of tardiness under one hour if management is notified; two points for an incident of tardiness under one hour if management is not notified; and three points for an incident of tardiness over one hour in duration.

On June 10, 2018, the claimant was 21 minutes late in returning from lunch, did not notify management and received two points; on July 8, 2018, he was 23 minutes late in returning from lunch, did not notify management and received two points; on August 1, 2018, he was 17 minutes late in returning from lunch, did not notify management and received two points; on September 10, 2018, he called in and reported he would not be at work, did not have a medical excuse and received three points; on September 16, 2018, he was 19 minutes late in returning from lunch, did not notify management and received two points; and on October 5, 2018, he

was 20 minutes late in returning from lunch, did not notify management and received two points for a total of 13 points. There is no evidence that these absences were related to illness.

The claimant received written warnings June 10, July 8 and August 1, 2018, for tardiness in returning from meal breaks. He was suspended three days September 16, 2018, after accumulating 11 points. The employer notified the claimant his employment was terminated October 9, 2018, for having 13 attendance points.

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 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 absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The November 1, 2018, reference 01, decision is affirmed. 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