

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNNIE JACKSON
Claimant

APPEAL NO. 09A-UI-00605-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VANTEC INC
Employer

OC: 12-21-08 R: 01
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 January 12, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 29, 2009. The claimant did participate. The employer did participate through Larry Heimlicher, Chief Operating Officer. Employer's Exhibit One was received.

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 laborer full time beginning November 2, 2008 through December 21, 2008 when he discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on December 19, 20 and 21, 2008. The claimant was given the employer's attendance policy when he was hired in November 2008. The claimant was to work on December 19 but called in indicating he had no ride to work because his car had broken down. The claimant was also scheduled to work on December 20 and December 21 but was a no call-no show. The claimant had missed work on December 2, December 10, December 11, December 15, December 16, December 19, December 20 and December 21.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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's allegation that he was not scheduled to work is not as credible as the employer's that he was as the employer had the work schedule in front of him. The claimant was given the work schedule for the rest of the year when he began his employment and it was his responsibility to know when he was to work.

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 knew or should have known 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 January 12, 2009, 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs