

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RONALD E CARR**  
Claimant

**CLEANING CONNECTION INC**  
Employer

**APPEAL 16A-UI-01541-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/27/15**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 25, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit by refusing to keep working. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2016. The claimant, Ronald E. Carr, participated and presented the testimony of witness, Royal Wells. The employer, Cleaning Connection Inc., participated through Lisa Mart, human resources director; and Greg Bower, project manager for construction cleaning.

**ISSUES:**

Did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a general cleaner from September 16, 2014, until this employment ended on December 24, 2015, when he was discharged.

Claimant has asthma and was adversely affected by cleaning on December 22, because the area he was cleaning was dusty. When the job was finished, claimant talked to a coworker that day and asked the coworker to tell Greg he was leaving work because he was having health issues. Claimant and his coworker were supposed to report to a second job for the remainder of the workday. Claimant left work and went to Broadlawns to get a breathing treatment. Later that day, Bower heard from the supervisor at the second job, who reported that only one employee showed up to work. Bower testified that claimant had previously refused to go to this second job. Claimant testified he never refused to go to a job, but he also stated he refused to go to a job in Waukee.

Claimant testified that he spoke to Bower on December 23. Bower told claimant he did not need him right now and asked him to call back in a week or two. When claimant asked if he was fired, Bower said he was not and said he just needed to let him go. Wells testified that he

heard Bower tell claimant he was laid off for several weeks. Bower testified that claimant failed to report to work on December 23. When claimant reported to work the following day, December 24, Bower discharged claimant. He notified claimant that because of his erratic attendance – and specifically his failure to report to the second job on December 22 and failure to report to work on December 23 – he no longer had a job.

Bower testified claimant had a history of attendance issues. Most recently, claimant was a no-call/no-show on December 2 and again on December 17. After the December 17 incident, Bower spoke to claimant and emphasized the importance of reliable attendance for the position. Bower testified that he told claimant he would be discharged if he was a no-call/no-show again. Claimant denies he failed to report to work on December 17, and he denies that Bower told him his job was in jeopardy at that time. However, claimant admits the two had a discussion about his attendance on December 17. Claimant had received one written warning for attendance in July 2015.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep’t of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer’s attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work.

The decision in this case rests, at least in part, upon the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds Bower provided more credible testimony than claimant. Claimant contradicted himself during his testimony, whereas Bower's statements were consistent and reasonable. Additionally, while claimant denied he was absent on December 17, he admitted the employer talked to him about his attendance after this date, and he did not provide any alternate reason for this conversation. The administrative law judge believes claimant was a no-call/no-show on December 17 and again on December 23.

The employer has credibly established that claimant was warned that further unexcused absences could result in termination of employment and neither claimant's half-day absence on December 22 nor his absence on December 23 were excused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The January 25, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

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Elizabeth Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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