

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH N MAHL
Claimant

KONKEL FOREST PRODUCTS INC
Employer

APPEAL 18A-UI-04331-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 02/25/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 26, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 26, 2018. Claimant participated. Employer participated through owner/supervisor Tony Konkell.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a mechanic/maintenance employee from February 23, 2004, and was separated from employment on February 26, 2018, when he was discharged.

The employer has a written attendance policy that requires employees to work their scheduled hours and be at work on time. The employer requires employees contact the employer and report their absence. The policy provides that employees will be warned as they accumulate attendance infractions. Claimant was aware of the employer's policy.

The final incident occurred when claimant was absent from his scheduled shift on February 22, 2018. Claimant was a no-call/no-show on February 22, 2018. Claimant did not contact the employer to report his absence. On February 23, 2018, claimant came to work and met with Mr. Konkell. Mr. Konkell asked claimant where he was on February 22, 2018. Claimant told Mr. Konkell he was sick/not feeling well on February 22, 2018. Mr. Konkell asked if claimant contacted anyone at the employer to report his absence and he responded no. Mr. Konkell then told claimant he was discharged.

On December 11, 2017, the employer gave claimant a written warning for being absent on December 1, 2017. On January 25, 2018, the employer gave claimant a verbal warning for being absent on January 24, 2018. On February 12, 2018, the employer gave claimant a verbal warning for being absent on February 9, 2018. On February 19, 2018, the employer gave claimant a verbal warning for being absent on February 16, 2018. Claimant was warned that his job was in jeopardy.

Since 2017, claimant has been absent, tardy, or left early on: January 11, 2017 (tardy); January 27, 2017 (unexcused absence); February 2, 2017 (left early); February 3, 2017 (unexcused absence); February 10, 2017 (unexcused absence); March 3, 2017 (tardy); March 9, 2017 (tardy); March 17, 2017 (unexcused absence); March 20, 2017 (left early); March 24, 2017 (unexcused absence); March 28, 2017 (tardy); March 29, 2017 (tardy); March 30, 2017 (unexcused absence); April 3, 2017 (tardy); April 13, 2017 (left early); April 18, 2017 (tardy); May 16, 2017 (tardy); May 18, 2017 (tardy); June 2, 2017 (unexcused absence); June 12, 2017 (tardy); June 16, 2017 (unexcused absence); June 26, 2017 (unexcused absence); June 29, 2017 (tardy); July 10, 2017 (unexcused absence); July 19, 2017 (unexcused absence); August 11, 2017 (unexcused absence); August 25, 2017 (unexcused absence); September 12, 2017 (tardy); September 14, 2017 (tardy); September 22, 2017 (unexcused absence); October 5, 2017 (tardy); October 10, 2017 (unexcused absence); October 11, 2017 (unexcused absence); November 8, 2017 (tardy); November 13, 2017 (unexcused absence); November 28, 2017 (tardy); December 1, 2017 (unexcused absence); December 20, 2017 (left early); December 27, 2017 (tardy); January 3, 2018 (left early); January 17, 2018 (tardy); January 24, 2018 (unexcused absence); January 25, 2018 (unexcused absence); January 30, 2018 (left early); February 7, 2018 (tardy); February 9, 2018 (unexcused absence); February 16, 2018 (unexcused absence); February 21, 2018 (unexcused absence); and February 22, 2018. The employer normally excuses absences if the employee calls the employer and reports they will be absent due to illness. Claimant did call in on some days and those were excused. Mr. Konkel testified that claimant was a no-call/no-show on the days the employer listed him as an unexcused absence. Claimant admitted he would miss work and not call the employer.

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. Benefits are denied.

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 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).

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982). Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Two absences would be the minimum amount in order to determine whether these repeated acts were excessive. Further, in the cases of absenteeism it is the law, not the employer's attendance policies, which determines whether absences are excused or unexcused. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 557-58 (Iowa Ct. App. 2007).

An employer's absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Although claimant testified his last absence on February 22, 2018 was due to illness, he never called the employer to report he would be absent. 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). Therefore, claimant's final absence cannot be considered excused.

The employer has established that claimant was warned that further unexcused absences could result in termination of employment and his final absence on February 22, 2018 was not excused. Claimant's final absence, in combination with his history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The March 26, 2018, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs