

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY ESLINGER

Claimant

APPEAL NO. 06A-UI-09757-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL INCORPORATED

Employer

**OC: 09-10-06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 29, 2006, 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 October 18, 2006. The claimant participated in the hearing. Jamie Reyes, Human Resources Generalist and Pete Bodensteiner, Production Supervisor, 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 production technician for Cargill Incorporated from November 14, 1994 to July 10, 2006. He was discharged for excessive absenteeism. The claimant worked rotating shifts of 8:00 a.m. to 8:00 p.m. or 8:00 p.m. to 8:00 a.m. On December 5, 2005, the claimant was placed on a performance improvement plan because of his attendance. Performance improvement plans are a last chance opportunity for the employee to retain their job. The plan stated that the claimant could have no more than three unexcused absences in the next 12 months or he would face termination. He was also required to contact three supervisory personnel to report his absences. Illness accompanied by a doctor's excuse did not count against the three allowed absences and the employer told him it would tear up the improvement plan if he had good attendance during the following 12 months. On May 3, 2006, the claimant was a no-call no-show. On May 25, 2006, the claimant was a no-call no-show for a mandatory meeting. On June 4 through June 10, 2006, the claimant took vacation without proper notice. On June 28, 2006, the claimant was a no-call no-show. On July 8, 2006, the claimant's sister-in-law called the employer at 8:15 p.m. and said he would not be at work. The claimant had threatened his wife's boyfriend by phone and the police were chasing him. Later that night the police showed up at the employer's premises looking for the claimant. On July 9, 2006, the employer told the claimant not to report for work and stated it would pay him for the day while it made a decision on his employment status. On July 10, 2006, the employer terminated the claimant's employment for attendance.

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:

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 was placed on a performance improvement plan December 5, 2005, because of his attendance. Following that date, he was a no-call no-show at least three times and the final absence was due to the claimant running from the police. While it is unfortunate that the claimant was experiencing personal problems, that does not excuse his failure to call and properly report his absences or to miss work because of a police situation. Consequently, the administrative law judge concludes 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. Benefits are denied.

DECISION:

The September 29, 2006, 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/pjs