

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK R LONG

Claimant

APPEAL NO. 16A-UI-09592-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC

Employer

OC: 11/22/15

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mark Long (claimant) appealed a representative's August 29, 2016, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Wells Enterprises (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 21, 2016. The claimant participated personally. The employer was represented by Caroline Semer, Hearings Representative, participated by Andrea Rozell, Associate Business Partner. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 6, 2013, and at the end of his employment he was working as a full-time category B production helper. The claimant signed for receipt of the employer's handbook on May 6, 2013. The handbook states that an employee who receives two final written warnings in a rolling calendar year will be terminated. The employer issued the claimant a written warning for attendance on June 23, 2016. The employer notified the claimant that further infractions could result in termination from employment.

Since September 17, 2015, the claimant was late for work nine times due to oversleeping. He was absent three times to care for his eight-year-old son who was ill. Twice the employer recorded that the claimant missed punching in. The claimant disputed this. On August 12, 2016, the claimant overslept and was late for work. The employer issued the claimant a final written warning and termination on August 12, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 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).

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 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's August 29, 2016, decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs