

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SPENSER JOHNSON
Claimant

APPEAL NO: 15A-UI-04385-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOVERNMENT EMPLOYEES
INSURANCE CO**
Employer

OC: 03/15/15
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 31, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 6, 2015. The claimant participated in the hearing briefly before hanging up. The administrative law judge attempted to call him back two times and left him a message directing him to call back if he wished to participate in the hearing but he did not do so and consequently did not provide any testimony or ask any questions of the employer. Nicole Parks, Human Resources Compliance Specialist; Tiffany Burnham, Claims Specialist; and Jackie Nolan, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

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 sales representative II for Government Employees Insurance Company from August 29, 2013 to January 31, 2015. He was discharged from employment due to a final incident of absenteeism that occurred on January 28, 2015.

The employer uses a point and percentage based, no-fault attendance system. Employees are allowed 60 hours of unexcused absenteeism during a rolling 12-month system. They must maintain a 97 percent attendance record. If they exceed 60 hours or drop below 97 percent the employee imposes disciplinary action. Occurrences drop off after one year. The first warning is a calculator which shows the employee his current hours above the allowed 60 hours and dependability status which shows his current attendance percentage. The second disciplinary

action is a written warning which provides the updated information since the calculator was issued and states that further unexcused absences could result in termination of employment.

The claimant was absent December 15, 2014, and accumulated 7.75 unexcused hours and was .36 minutes tardy December 16, 2014, which placed him at a total of 62.70 hours. On December 18, 2014, the claimant's attendance was at 96.89 percent and he received a calculator warning (Employer's Exhibit Four).

On January 2, 2015, 2.74 hours dropped off. The claimant was 13 minutes tardy January 3; 17 minutes tardy January 5; and was absent 7.75 hours January 7, 2015. On January 9, 2015, he received a written warning after his attendance percentage dropped to 96.68 and he had a total of 67.68 unplanned hours (Employer's Exhibit Three).

On January 13, 2015, the claimant was 10 minutes tardy but the employer did not take any disciplinary action against him. He was 16 minutes tardy January 27, 2015, and 13 minutes tardy January 28, 2015, which absences did count against him. Those incidents of tardiness placed the claimant at 96.66 percent attendance and 67.95 hours, 7.95 hours over the allowed 60 hours of unplanned absenteeism. There is no evidence that these absences were related to illness. The employer notified the claimant his employment was terminated effective January 31, 2015.

During 2014, the claimant received dependability calculator warnings January 10, January 21, April 5, May 5, June 5, July 8, August 29, October 13, November 10 and November 14.

The claimant filed a claim for benefits effective March 15, 2015, but has not claimed or received unemployment insurance benefits since his separation from this employer.

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.

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).

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. Therefore, benefits are denied.

The claimant is not overpaid benefits because he has not made a weekly claim for benefits.

DECISION:

The March 31, 2015, reference 01, decision is reversed. 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. The claimant is not overpaid benefits because he has not made a weekly claim for benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css