

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCISCO BRIONES
Claimant

APPEAL NO. 10A-UI-09427-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

OC: 06-06-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 29, 2010, 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 August 19, 2010. The claimant participated in the hearing. Nikki Bruno, Human Resources Generalist, 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 general production laborer for West Liberty Foods from September 23, 2009 to June 8, 2010. He worked the 7:32 a.m.-to-4:02 p.m. shift. He was discharged from employment due to a final incident of absenteeism that occurred June 7, 2010. The employer allows ten occurrences before termination occurs as long as the employee has received a Level Three warning for accumulating nine occurrences. On November 19, 2009, the claimant left at 10:57 a.m. and received one-half of an occurrence; on December 15, 2009, he took a personal day and received one occurrence; on December 21, 2009, he was absent due to illness and received one occurrence; on December 23, 2009, he was tardy because he had to find a ride and received one-half occurrence; on January 7, 2010, January 9, 2010, January 20, 2010 and February 15, 2010, he was absent due to illness and received one occurrence on each occasion; on February 17, 2010, he was a no-call, no-show and received three occurrences; and on June 7, 2010, he was tardy and received one-half occurrence. He received a Level One warning January 14, 2010, after accumulating five and one-half occurrences; a Level Two warning February 3, 2010, after accumulating six occurrences; and a Level Three warning after accumulating ten occurrences February 18, 2010. He was not terminated February 18, 2010, even though he had ten occurrences, because he received three occurrences for his no-call, no-show February 17, 2010, and thus had not received a level three warning before reaching ten occurrences.

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). Six and one-half of the claimant's ten and one-half points were not due to illness. Additionally, he received a break when he did reach ten points, because he accumulated three occurrences for a no-call, no-show, which put him at ten points; but he had not been given his Level Three warning yet, so his employment was not terminated at that time and he was effectively given a second chance because he was a no-call, no-show. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and that the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are withheld.

DECISION:

The June 29, 2010, 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/kjw