

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAROLD L BROOKS
Claimant

APPEAL NO. 08A-UI-04453-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 11-11-07 R: 01
Claimant: Appellant (1)

871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 28, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 29, 2008. The claimant did participate. The employer did participate through Alfredo Moreno, Human Resources Representative and was represented by Craig Cree of TALX UC eXpress.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production technician full time beginning May 2, 2005 through March 21, 2008 when he was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on March 21, 2008 when he failed to show up for work. The claimant was to be to work at 4:50 p.m. on March 21, 2008. He fell asleep in his chair at home and woke up at 4:30 p.m. He called the employer and told Sonja that he had overslept and that it took him twenty-five minutes to get to work. He was told that he would accrue attendance points for being late to work. Since the claimant knew that if he accrued any more attendance points he would be discharged, he chose not to come to work at all since he knew that his tardiness on March 21 would lead to his discharge. The claimant knew that if he was late to work on March 21, 2008 or missed work he would be discharged. The claimant was last warned on January 8, 2008, that he faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on March 11, 20, 2008; February 29, 2008; December 12, 2007; October 10, 2007; September 13, 2007; July 23, 2007; May 30, 2007; March 28, 2007; and February 2, 16 and 22, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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).

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 April 28, 2008, 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs