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

CLARK A BREWSTER
Claimant

APPEAL NO. 14A-UI-02095-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 01/19/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 10, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on March 18, 2014, by telephone conference call. The claimant participated personally. Employer participated by Carrie Jaster. The record consists of the testimony of Carrie Jaster; the testimony of Clark Brewster; and Employer's Exhibits 1-2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an appliance manufacturer located in Middle Amana, Iowa. The claimant was rehired after being terminated for attendance on May 16, 2013. He signed what is known as a last chance agreement. Any absences during the next twelve months would lead to termination. The claimant knew his job was in jeopardy.

The claimant's attendance record shows the following:

November 22, 2013	Tardy and Left Early	Personal Illness
November 15, 2013	Absent	Personal Illness
November 26, 2013	Absent	Personal Illness
December 2, 2013	Absent	Personal Illness
December 3, 2013	Absent	No call/no show
December 4, 2013	Absent	Personal Illness
December 5, 2013	Absent	Personal Illness
December 6, 2013	Absent	Personal Illness
January 6, 2014	Absent	Car Trouble
January 7, 2014	Absent	Car Trouble

The claimant's final two absences were due to matters of personal responsibility. He had three instances of unexcused absenteeism in approximately one month.

REASONING AND CONCLUSIONS OF LAW:

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early The concept includes tardiness and leaving early Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7) In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence showed that the claimant had excessive unexcused absenteeism. While the claimant's absences for personal illness are excused, there are three absences that are unexcused and occurred after a last change agreement, where the claimant agreed that there would not be any further absences during a twelve-month period. The absences in question occurred during approximately a one-month period prior to termination. Since the employer has shown excessive unexcused absenteeism, misconduct is established and benefits are denied.

DECISION:

The decision of the representative dated February 10, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefits amount, provided he is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs