

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JASON M HOPKINS
2114 MULBERRY AVE
MUSCATINE IA 52761

LETICA CORPORATION
5710 – 49TH ST S
MUSCATINE IA 52761

Appeal Number: 05A-UI-01342-JTT
OC: 01/02/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

Jason Hopkins filed a timely appeal from the January 27, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 23, 2005. Mr. Hopkins participated in the hearing. Leticia participated through Jeanne Bishop, Human Resources Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jason Hopkins was employed by Leticia as a full-time Mold Technician from July 8, 2004 to December 17, 2004, when Ms. Bishop and Todd Benac, Second Shift Supervisor, discharged

him for misconduct based on excessive absenteeism. Mr. Hopkins scheduled hours of employment were 3:00-11:00 p.m.

The final absence occurred on December 15, 2004. On that date, Mr. Hopkins was 11 minutes tardy. Mr. Hopkins is not able to recall the reason for his tardiness on this date, but thinks it may have been due to losing track of time while Christmas shopping. As a result of the tardiness on December 15, Mr. Hopkins had incurred 6 "occurrence points" within a six-month period under the employer's no-fault attendance policy and was, therefore, discharged. Under the employer's attendance policy, absences reported at least one hour prior to the scheduled start of a shift count as 1.0 occurrence. Absences reported less than one hour prior to the start of the shift count as 1.5 occurrences. Tardiness of less than two hours counts as 0.5 occurrences. Tardiness in excess of two hours counts as 1.0 occurrence. The attendance policy is contained in the employee handbook. Mr. Hopkins acknowledged receipt of the handbook on June 30, 2004.

Prior to the tardiness on December 15, Mr. Hopkins had incurred 5.5 occurrence points for a combination of absences and incidents of tardiness. On August 18 and 28, Mr. Hopkins was absent due to illness and notified the employer at least one hour before the scheduled start of his shift. On October 26, Mr. Hopkins arrived for work on time, had to stand in line to use the time clock and was clocked in at 3:01 p.m. Mr. Hopkins explained his circumstances to his supervisor, but the supervisor apparently refused to excuse the late clock-in time. On October 30, Mr. Hopkins was four hours tardy due to car trouble. On November 9, Mr. Hopkins was absent due to car trouble. On November 26, Mr. Hopkins was absent due to illness and notified the employer at least one hour before the scheduled start of his shift.

Regarding the tardiness or absence due to car trouble, Mr. Hopkins had purchased a vehicle that he thought was reliable at the time of the purchase, but turned out not to be reliable. On October 30, Mr. Hopkins discovered half an hour before the scheduled start of shift that his car would not start. Though Mr. Hopkins lived only a 15-minute car ride away from his employment, there was no one immediately available to give him a ride to work. Mr. Hopkins was not able to get to work on October 30 until he made contact with his girlfriend. On November 9, Mr. Hopkins' car broke down while he was enroute to work. Instead of going to work, Mr. Hopkins worked on fixing his car.

Prior to the December 15 tardiness, Mr. Hopkins has been reprimanded for excessive absenteeism and/or tardiness. On November 5, Mr. Hopkins received a written warning that he had accumulated 3.0 occurrence points within a six-month period. On November 12, Mr. Hopkins received a written warning that he had incurred 4.5 points within a six-month period. On November 29, Mr. Hopkins again received a written warning that he has incurred 4.5 points within a six-month period.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Hopkins was discharged for misconduct in connection with his employment based on excessive unexcused absences.

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.

Because the claimant was discharged, the employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The administrative law judge must consider Mr. Hopkins' absences in light of the applicable law, rather than the employer's no-fault attendance policy. In order for Mr. Hopkins' absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the employer must show that the absences were excessive and that the absences were unexcused. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the employer must first show that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32-8. Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Based on the evidence in the record, set forth in the Findings of Fact, and the applicable law, the administrative law judge concludes as follows: Mr. Hopkins' absences on August 18, 28, and November 26, which were due to illness and were properly reported to the employer were excused absences. Mr. Hopkins was not in fact tardy on October 26, the day he had to wait in line to use the time clock and had a recorded clock in time of 3:01 p.m. Mr. Hopkins' incidents of tardiness on October 30, December 15, and his absence on November 9, were all unexcused, since they were based solely on problems with transportation.

The question, therefore, is whether Mr. Hopkins' four-hour tardiness on October 30, his complete absence on November 9, and his 11-minute tardiness on December 15, were excessive. Based on the evidence in the record, the administrative law judge does not find these three unexcused absences to be excessive. Accordingly, no disqualification will enter.

DECISION:

The representative's decision dated January 27, 2005, reference 01, is reversed. The claimant was discharged from his employment for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

jt/sc