

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY L PEAK Claimant	68-0157 (9-06) - 3091078 - EI
WHIRLPOOL CORPORATION Employer	APPEAL NO. 18A-UI-06249-S1-T ADMINISTRATIVE LAW JUDGE DECISION
	OC: 05/06/18 Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Peak (claimant) appealed a representative's June 1, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Whirlpool Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 22, 2018. The claimant participated personally. The employer participated by Sara Nichols, Senior Human Resources Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 31, 2017, as a full-time senior engineer. The employer's handbook was available to the claimant electronically. The claimant properly reported his absences.

He did not give the employer a reason for his absence on February 9, 2018. He was absent due to his sister's illness on March 1, 2, 5, 6, 19, 20, 21, 22, 23, 26, and 27, 2018. The employer would have granted him Family Medical Leave and excused those absences had he completed the paperwork, applied, and been qualified. The employer told the claimant about the leave but the claimant did not complete the paperwork. On March 28, 2018, the employer issued the claimant a warning for his absences. The manager told the claimant he could not miss any more work.

On April 9, 2018, the claimant was absent from work due to car trouble. The manager told the claimant he needed to take a taxi, Uber, or something, find some other way to get to work. On April 10, 2018, the claimant told the employer he would not be at work because of car problems but he also said his car was fixed. On April 11, 2018, the claimant reported he would not be coming to work due to car issues. On April 11, 2018, the employer terminated the claimant for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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 not to be absent again 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 representative's June 1, 2018, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs