

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERMAN MILLER SR
Claimant

APPEAL NO. 07A-UI-06522-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 06-03-07 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 18, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 18, 2007. The claimant participated in the hearing. Melissa Skinner, Assistant Human Resource Manager, 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 production worker for Cargill Meat Solutions from January 17, 2006 to May 14, 2007. The employer allows employees to accumulate ten attendance points during a rolling 12-month period. If the last absence is due to illness and the employee provides a doctor's excuse, that absence is not counted as a point. Points drop off after 12 months. The claimant received a verbal warning, in writing, June 22, 2006, for accumulating five points; first written warnings August 21 and September 9, 2006, for accumulating eight points; and second written warnings April 9, 17 and 19, 2007, for accumulating nine points. On April 20, 2007, the claimant was absent. The employer spoke to the claimant about the situation April 27, 2007, his first day back to work, and the claimant indicated he had a doctor's excuse for his absence. The employer told him he needed to provide that note by May 14, 2007, or his employment would be terminated. The claimant did not provide the note or respond to the FMLA paperwork the employer sent April 23, 2007, and when the claimant did not return to work after April 27, 2007, the employer determined the claimant voluntarily left his employment.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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). Although the claimant said he had a doctor's excuse for his absences April 19 and 20, 2007, he did not provide the employer with the note or return to work after April 27, 2007. While he may have had a doctor's note he had a responsibility to get that to the employer by May 14, 2007, and even if he was out of town and had car problems he could have called the employer and/or faxed or mailed the note to them by that date. Additionally, the claimant went to Tennessee and was absent the last one and one-half weeks because of car problems. 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 absenteeism, is considered excessive. Therefore, benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The June 18, 2007, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$1,130.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css