

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN VILLARREAL
Claimant

APPEAL NO: 10A-UI-09625-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACKS OK TIRE SERVICE CO-ADP
Employer

**OC: 05-16-10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 25, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 30, 2010. The claimant participated in the hearing with Attorney Brian Stowe. Jack Limbaugh, Owner/President, 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 automotive service technician for Jacks OK Tire Service from March 10, 2008 to May 13, 2010. He was discharged from employment due to a final incident of absenteeism that occurred on May 13, 2010. The claimant was scheduled to work from 7:30 a.m. to 5:30 p.m. On January 29, 2010, he was seven minutes late; on February 5, 2010, he was two hours and 55 minutes late; on February 6, 2010, he was 48 minutes late; on March 15, 2010, he was 9.6 minutes late; on March 16, 2010, he was 19.8 minutes late; on March 30, 2010, he was 6.6 minutes late; on April 12, 2010, he was 36.6 minutes late; on April 17, 2010, he was 12.6 minutes late; on April 21, 2010, he was 36 minutes late; on April 28, 2010, he was 20.4 minutes late; on April 30, 2010, he was 10 minutes late; on May 7, 2010, he was 36.6 minutes late; on May 12, 2010, he was one hour and 55 minutes late; and on May 13, 2010, he was one to one and one-half hours late for work and the employer pulled his timecard and terminated his employment for excessive tardiness when he did arrive. The employer verbally warned the claimant about his tardiness February 26, 2010 and April 9, 2010, at which time he told the claimant his attendance needed to improve and his job was in jeopardy if it did not. There is no evidence that these absences were related to illness.

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). The claimant was tardy on 14 occasions between January 29 and May 13, 2010. 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/tardiness, is considered excessive. Therefore, benefits are denied.

DECISION:

The June 25, 2010, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css