

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES T RHINER
Claimant

APPEAL NO. 09A-UI-00574-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLT PLUMBING & HEATING INC
Employer

OC: 11/02/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Rhiner (claimant) appealed a representative's January 5, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Holt Plumbing & Heating (employer) for repeated tardiness in reporting for work after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 29, 2009. The claimant was represented by Eric Updegraff, Attorney at Law, and participated personally. The employer participated by Lynn Holt, Owner/President.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 18, 2008, as a full-time plumber.

The employer issued the claimant a written warning on October 14, 2008, for failure to respond to three requests for on-call work and being tardy two times. The claimant slept through the calls or did not hear the call because he was mowing. His tardiness occurred when he did not allow himself enough time to travel to work. The employer notified the claimant that further infractions could result in termination from employment.

On or about October 24, 2008, the claimant overslept and was late in reporting to work. He had worked for the employer until 9:00 p.m. the night before. The employer did not schedule the claimant for work on October 27, and 28, 2008. On October 29, 2008, the employer terminated the claimant for repeated tardiness in reporting to work after having been warned.

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:

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).

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 that further unexcused absences could result in termination of employment and that 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 January 5, 2009 decision (reference 02) 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/kjw