

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D MYRICK
Claimant

APPEAL NO. 13A-UI-11115-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/05/09
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 30, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on November 1, 2013. Claimant participated. Employer did participate through Andrew Schroeder, Yard Manager. Employer's Exhibits A through C were entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a morning stocker beginning on March 28, 2013 through September 5, 2013, when he was discharged. The claimant was given the attendance policy when hired and was told that he would be discharged if he reached ten points. The claimant was absent from work on June 1 and was given three points under the attendance policy. On June 15 the claimant was late to work and was awarded one attendance point bringing his total to four. He was given written warnings for each violation that put him on notice that further attendance issue, including reaching ten points would lead to his discharge. On June 27, 2013 he was two hours and eleven minutes late to work and was given three attendance points bringing his total to seven. He signed a warning on July 2 that put him on notice that if he reached nine points he would be suspended and if he reached ten points he would be discharged. The employer is allowed under their policy to skip any step in the disciplinary policy they so choose. On August 30, 2013 the claimant was almost two hours late to work without calling in to report his tardiness because he could not find a ride to work. He was awarded five points bringing his total to twelve and thus was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 as to 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 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 September 30, 2013, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css