

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TUNGSHI W MANTID
Claimant

APPEAL NO. 07A-UI-05346-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARDEES FOOD SYSTEMS INC
Employer

**OC: 05-21-06 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 11, 2007, reference 08, decision that allowed benefits. After due notice was issued, a hearing was held on June 13, 2007. The claimant did not participate. The employer did participate through Melanie Stepp, District Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a general manager in training full time beginning March 27, 2007 through April 26, 2007, when he was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on April 25, 2007, when he was a no-call/no-show. The claimant had another trainee tell the manager that he would not be in. The claimant had previously been warned that he was to personally contact the district manager when he was absent. During the one month of claimant's employment, he missed work on eight occasions. He had been warned about his attendance and that his failure to report to work could lead to his discharge.

Claimant has received unemployment benefits since filing a claim with an effective date of May 21, 2006.

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).

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. Benefits are withheld.

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

DECISION:

The May 11, 2007, reference 08, 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. Claimant is overpaid benefits in the amount of \$564.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw