

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ETHAN S GERHARDT**  
Claimant

**WINEGARD COMPANY**  
Employer

**APPEAL 15A-UI-10817-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/06/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 22, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he was discharged for excessive unexcused absenteeism after being warned. The parties were properly notified about the hearing. A telephone hearing was held on October 12, 2015. Claimant Ethan Gerhardt participated on his own behalf. Employer Winegard Company participated through Human Resource Manager Kerry Hale.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production employee beginning August 18, 2014, and was separated from employment on September 2, 2015, when he was discharged. The claimant's shift started at 6:00 a.m. Under the employer's attendance policy, unexcused absences or those without any paid time off to cover them, result in points. An employee who reports to work less than one hour after his scheduled start time accrues a half point. An employee who reports to work more than one hour after his scheduled start time or misses an entire day of work accrues a full attendance point.

On November 4, 2014, the claimant accrued one attendance point when he was over two hours late. He does not recall why he was late to work that day. On January 26, 2015, the claimant missed an entire day of work due to family problems, although he cannot recall the details of that absence. On April 20, 2015, the claimant missed a full day of work due to his child's illness as he could not take his son to daycare and had no one else to watch him. On May 29, 2015, the claimant was approximately one hour late to work because he overslept. On June 11, 2015, the claimant was over two hours late to work and believes it was due to car problems. The claimant received warnings after each absence beginning with the May 29th absence. On his last warning, issued on June 17, 2015, the claimant was put on notice he had four and a half absences and any further attendance points would result in his termination.

On the morning of September 2, 2015, the claimant had car problems as his car would not start. He was finally able to get his car working and contacted his employer at 7:20 a.m. He told his supervisor that he was running late and asked if he had any time off to cover his absence. His supervisor told him to wait to report to work and he would contact him. Eventually, the claimant's supervisor called him back and notified him that he was terminated for violating the attendance policy.

#### **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. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, 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 22, 2015, (reference 01) unemployment insurance decision is affirmed. 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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