

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE BRECKENRIDGE

Claimant

APPEAL NO: 13A-UI-05665-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC

Employer

OC: 03-17-13

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 May 6, 2013, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 19, 2013. The claimant participated in the hearing. Deanna Larue, Human Resources Manager, 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 sorter for Millard Refrigerated Services from October 22, 2012 to March 19, 2013. He was discharged from employment due to a final incident of absenteeism that occurred on March 16, 2013.

The claimant started on a 90-day probationary period and his attendance and performance were reviewed at 30, 60 and 90 days. Due to attendance and performance issues, the employer extended the claimant's probation an additional 90 days, to April 22, 2013, at his 60-day review.

The employer's attendance policy allows employees to accumulate 10 points within a rolling calendar year. Employees received one point for a full day absent and one-half point for an incident of tardiness. Employees are required to call the employer at least 30 minutes prior to the start time of their shift. If they fail to call in on time and then are tardy or absent they receive one and one-half points.

On November 26, 2012, the claimant was absent and received one point. He does not recall the reason for his absence. On December 1, 2012, the claimant was tardy because he experienced car problems and he received one-half point. On January 5, 2013, the claimant called at 7:10 a.m. for his 7:00 a.m. shift and received one and one-half points for the incident of

tardiness and calling in late. On Saturday, January 12, 2013, the claimant was scheduled to work at 10:00 a.m. He called the employer at 9:40 a.m. to report his car would not start, did not show up at any time that day, and received one and one-half points. On February 20, 2013, the claimant was scheduled to work at 7:00 a.m., clocked in at 8:35 a.m. and received one-half point. He had a total of five points and received a written counseling. On February 21, 2013, the claimant was scheduled to work at 7:00 a.m., clocked in at 8:06 a.m. and received one-half point. On March 1, 2013, the claimant was scheduled to work at 7:00 a.m., clocked in at 7:09 a.m. and received one-half point. He had a total of six points at that time and consequently received a written warning for his attendance. On March 16, 2013, the claimant was scheduled to work at 7:00 a.m., clocked in at 7:09 a.m., and received one-half point for a total of six and one half points.

The employer monitors probationary employees' attendance very closely. After the claimant accumulated six and one-half points between November 26, 2012, and March 16, 2013, it determined the claimant was not going to survive the probationary period because of his attendance. It had been discussing his attendance and sent two emails to the general manager about the situation and the general manager approved the claimant's termination of employment. It then spoke to the Vice-President of Human Resources about terminating the claimant's employment and he also agreed the claimant should be discharged. There is no evidence any of the claimant's absences were due to illness. The employer notified the claimant his employment was terminated March 19, 2013.

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). While the claimant did not reach the 10-point attendance threshold that results in termination for non-probationary

employees, he did accumulate six and one-half points in just under his first four months of employment. His attendance was of such concern to the employer it extended his probation by 90 days at the time of his 60-day review. Additionally, the claimant received a written counseling as well as a written warning regarding his attendance, and knew, or should have known, his job was in jeopardy due to his attendance. Finally, the claimant's absences were not due to illness and consequently were unexcused.

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. Therefore, benefits must be denied.

DECISION:

The May 6, 2013, reference 04, 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/pjs