

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L SHADE
Claimant

APPEAL NO. 12A-UI-13720-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEATON INC
Employer

OC: 10/21/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 15, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on January 28, 2013 in Cedar Rapids, Iowa. Claimant participated. Employer participated through controller Kathy Frerichs. Employer's Exhibits 1 through 8 were received.

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: Claimant was employed as a part-time crew employee at Burger King on 33rd Avenue in Cedar Rapids from October 31, 2011 through October 20, 2012 when he was discharged. On Saturday, October 20 he was a no-call/no-show on the 5:00 p.m. to 1:00 a.m. shift because he did not know he was on the schedule. (Employer's Exhibit 1) His name was on the schedule, which was posted in the office or break room five days in advance, including when he worked on October 19 worked 10:00 p.m. to 6:00 a.m. (Employer's Exhibit 2) He was a no-call/no-show on October 13 and district manager, Derrick Wheeler issued a final warning. (Employer's Exhibits 4 and 5) Assistant Manager Jennifer Fisher did not tell him he did not have to work. If changes are made to the schedule, the change is initialed by the authorizing manager. This was not done. He asked Fisher why he was not scheduled. She did not look at the schedule but told him if he is not listed on the schedule, then he is not scheduled. He had been warned that it is his responsibility to know when he is scheduled. (Employer's Exhibit 4) He had other warnings for absenteeism and tardiness. (Employer's Exhibits 5 - 8)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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 Dep't of Job Serv.*, 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 in a timely manner as to when and why the employee is unable to report to work. Employer has established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The November 15, 2012 (reference 01) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css

NOTE TO EMPLOYER:

If you wish to add your suite number, please access your account at:
<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v=mpCM8FGQoY>