

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHAEL S NEUBAUER
Claimant

APPEAL NO. 19A-UI-00890-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

J & K CONTRACTING LLC
Employer

OC: 01/06/19
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Neubauer (claimant) appealed a representative's January 22, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with J & K Contracting (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 14, 2019. The claimant participated personally until he disconnected before the record had closed. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in August 2018, as a full-time level B laborer. He signed for receipt of the employer's handbook when he was hired.

The claimant was tardy for work because he was living in two different places, he had to take his children to school and had a flat tire. He was absent from work because he had a vehicle issue. Once he properly reported his absence due to illness. Two or three times the employer told the claimant not to be late. After his last absence/tardy, the foreman told the claimant there would be no more absences or the foreman could not save the claimant's job.

On the claimant's last day of work, the foreman told the claimant he had to leave the worksite to run errands. The claimant told the foreman to drop him off at a gas station so he could take care of things in his personal life. The foreman terminated the claimant for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 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 when and why the employee is unable to report to work. The evidence 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 representative's January 22, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs