

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES L FIELDS Claimant	APPEAL NO. 17A-UI-11398-S1-T ADMINISTRATIVE LAW JUDGE DECISION
BROADLEAF LUMBER COMPANY Employer	OC: 10/15/17 Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Fields (claimant) appealed a representative's November 3, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Broadleaf Lumber Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 28, 2017. The claimant participated personally and through Kathy Fields, his wife. The employer participated by Herman Kuhns, President.

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 on August 14, 2017, as a part-time lumber stacker. The employer hired the claimant to work when needed. The employer did not have a handbook. The employer gave the claimant the option to work hours but the employer did not require the claimant to work the hours offered.

The claimant was absent from work for monthly meetings with his probation officer. He notified the employer in advance of the meetings. The claimant also notified the employer that he needed to leave early one Friday to prepare for a family trip to Nebraska. The employer had trouble remembering the claimant's request but allowed him to leave early. The employer did not issue the claimant a warning for the three absences.

The employer gave the claimant the option to work on Saturday, October 14 and Monday, October 16, 2017, but said it was not necessary. The claimant accepted the hours even though he had never worked on a Saturday for the employer. On October 14, 2017, two hours prior to the start of the shift, the claimant sent a text to the employer saying he had a family medical emergency and would not be at work that day. He said he would be at work on October 16, 2017. The employer sent the claimant a termination text message in response.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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. All of the absences prior to the final absence were pre-approved by the employer. The employer has not established that the claimant was warned that unexcused absences could result in termination of employment. The final absence was due to a family medical emergency situation and out of the claimant's control. The employer has shown sufficient evidence of job-related misconduct. The employer did not meet its burden of proof. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's November 3, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs