

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SEAN M MILLER**  
Claimant

**APPEAL NO. 10A-UI-16967-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PETERSON CONTRACTORS INC**  
Employer

**OC: 12/06/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sean Miller (claimant) appealed a representative's December 1, 2010 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Peterson Contractors (employer) for repeated tardiness in reporting for work after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 25, 2011. The claimant participated personally. The employer participated by Jennifer Lockhart, Payroll Coordinator; Lauren Call, Safety Officer; and Jon Christie, Foreman.

**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 June 13, 2007, as a full-time equipment operator. The claimant signed for receipt of the employer's handbook annually. The employer issued the claimant warnings for tardiness on October 25, 27, and 28, 2010. The claimant was 90 to 210 minutes late for work. The claimant was late due to either commuting distance or oversleeping.

On October 29, 2010, the claimant was not at the work site more than an hour after the start of the shift because he overslept. The employer called the claimant and suspended him from work. On November 8, 2010, the employer terminated the claimant.

**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:

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).

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 employer has established that the claimant was warned 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 December 1, 2010 decision (reference 03) 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.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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