

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY D COLLINS
Claimant

APPEAL NO. 13A-UI-11179-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED COMPONENT
Employer

OC: 12/23/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Larry Collins (claimant) appealed a representative's September 25, 2013, decision (reference 05) that concluded he was not eligible to receive unemployment insurance benefits because he was suspended from work with Advanced Component (employer) for violation of company rules. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 25, 2013. The claimant participated personally and through his wife, Daune Collins. The employer participated by Tim Woodle, Human Resources Manager, and Jim Sexton, Production Supervisor.

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 27, 2011, as a full-time production worker. The claimant signed for receipt of the employer's handbook on July 1, 2011, and January 16, 2012. The handbook has a policy that gives an employee a two-hour window to report to work on days of bad weather.

The employer issued the claimant a warning on August 24, 2012 for being absent due to a medical issue. On August 28, 2012, the employer issued the claimant a warning for taking an unauthorized break. On January 18, 2013, the employer issued the claimant a warning for absenteeism for childcare issues. The employer issued the claimant a written warning on the same day for violation of a safety policy. On March 5 and April 12, 2013, the employer issued the claimant a written warning because he did not report to work all day due to the weather. The employer issued the claimant a warning on March 11, 2013, for failure to follow instructions. On March 13, 2013, the employer issued the claimant a written warning for eating food on the work floor. The employer notified the claimant in every warning that further infractions could result in termination from employment.

The employer issued the claimant a 90-day performance improvement plan on July 17, 2013. On July 22, 2013, the claimant did not follow procedures and crashed a machine. On July 25, 2013, the claimant had issues with quality. The employer issued the claimant a written warning and one-day suspension on July 25, 2013, for violation of quality policy. The employer notified the claimant that further infractions could result in termination from employment. The claimant did not follow procedures and crashed the machine again on August 14, 2013. On August 15, 2013, the employer had a 30-day review of the performance plan and decided it was best to move the claimant to a different department.

On August 27, 2013, the claimant was tardy returning from break. The lead asked the claimant why he was late and he responded that he was blocked by forklifts. The lead asked the claimant why he was the only worker blocked by forklifts. The claimant commented in a way that the lead could not hear him say "knock it off". The claimant was called to the human resources office to discuss the comment he made. The claimant was suspended on August 27, 2013, and terminated on August 29, 2013, for excessive absenteeism after having been warned and unprofessional behavior.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). 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 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.

An employer has a right to expect employees to follow instructions in the performance of the job regarding appearing for work and treating other worker appropriately. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 25, 2013, decision (reference 05) 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/pjs

