

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRUCE A JOHNSON
Claimant

APPEAL NO. 18A-UI-10254-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOYOTA MOTOR CREDIT CORPORATION
Employer

OC: 09/16/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bruce Johnson (claimant) appealed a representative's October 5, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Toyota Motor Credit Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 26, 2018. The claimant participated personally. The employer was represented by Marlene Sartin, Hearings Representative, and participated by Maddie Stastny, Human Resources Specialist.

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 started work on July 17, 2017, as a full-time customer service representative. The claimant signed for receipt of the employer's handbook on July 13, 2017, prior to his first day of work. The employer's attendance policy indicates that five absences within a six-month period would result in termination from employment.

The claimant properly reported all his absences. He left work early on August 13, 2018, for an unknown reason. On August 20, 2018, the claimant applied for leave of absence (LOA) because his father-in-law, in Texas, had a stroke and was on life support. He was absent on August 22, 23, and 24, 2018, while he and his wife made end of life decisions in Texas. The father-in-law passed away and the claimant was granted bereavement leave from August 25 to September 4, 2018. On September 5, 2018, the claimant returned to work and the employer issued him a final written warning for his absence on August 22, 23, and 24, 2018. During the issuance of the warning the employer notified the claimant that the LOA application was rejected and that further infractions could result in termination from employment. The claimant had four absences in August 2018.

On September 8, 2018, the claimant's mother-in-law was taken to the emergency room. She was in the hospital until September 17, 2018. The mother-in-law provided child care for the claimant's three-year-old son. The claimant did not have an alternate plan for child care. The claimant properly reported his absence from work on September 10, 11, 12, 13, 14, and 17, 2018. On September 17, 2018, the claimant told the employer he was unsure when he could return to work. The employer terminated the claimant for excessive absenteeism. He had six absences for lack of child care in September 2018. Later that same day, the mother-in-law was released from the hospital. On September 19, 2018, the mother-in-law was able to care for the claimant's son and the claimant was available to work.

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 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. Benefits are withheld.

DECISION:

The representative's October 5, 2018, 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