

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DARRELL E KINGREY
Claimant

APPEAL NO. 15A-UI-04666-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FULL CIRCLE SERVICES INC
Employer

OC: 03/29/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Full Circle Services (employer) appealed a representative's April 15, 2015, decision (reference 01) that concluded Darrell Kingrey (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 27, 2015. The claimant participated personally. The employer participated by Matt Archibald, Human Resource Coordinator, and Amber Ralston-Saunders, Program Manager.

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 May 29, 2008, and at the end of his employment he was working as a part-time community assistant. The claimant signed for receipt of the employer's handbook on May 29, 2008.

The claimant did not appear for work or notify the employer of his absence in 2011. It was a difficult week for the claimant because his mother-in-law and first grandchild died in the same week. The employer discussed the claimant's absence with him when it happened and revisited the incident at his yearly review on May 31, 2013.

The claimant was scheduled to work on March 30, 2015, and have March 31, 2015, off. The claimant confused the two days. He thought he had March 30, 2015, off and was scheduled to work on March 31, 2015. The claimant did not appear for work on March 30, 2015 when he was supposed to meet a consumer at the consumer's home. The consumer could not be left alone. The employer was alerted to the consumer's situation and arrived at the consumer's home. The claimant admitted that he accidentally mixed up the days. The employer terminated the claimant on April 2, 2015.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2015. The employer participated personally at the fact finding interview on April 13, 2015, by Matt Archibald.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

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). 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).

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. In the claimant's work with consumers, it was important that he appear when scheduled. Even so, the employer did not establish that the claimant was warned that further unexcused absences could result in termination of employment when he was absent once in 2011. The claimant's absences were not excessive. He was absent without notice twice in four years without being warned of any repercussions. The employer talked to him about the 2011 incident or was merely reminded of the incident in his yearly review.

Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 15, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs