

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LLOYD D PIERCE
Claimant

CLARION PACKAGING LLC
Employer

APPEAL 14A-UI-11506-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/05/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 21, 2014 (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 26, 2014. Claimant participated. Employer participated through human resource manager Debbie Roberts. Damond Roberts did not participate. Claimant waived his in-person hearing request.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a maintenance worker from March 5, 2007 and was separated from employment on September 9, 2014. He called his supervisor A.J. Luft on September 8 and told him he would be an hour late for his 7:00 a.m. start time because he would smell like alcohol since he quit drinking five hours earlier. Luft told him to report at noon and meet with him. Claimant was a no-call/no-show for the meeting or the remainder of the shift. The next day he reported to work and was discharged. He had been warned in writing on July 28, 2014 about a no-call/no-show on July 22 (he called near the end of his shift because his fiancée attempted suicide the night before) and general absenteeism (tardiness). He had also been absent on other days but the employer did not have that information to present at hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 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 in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The October 21, 2014 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/can