

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEROMEY D COPELAND
Claimant

APPEAL NO. 11A-UI-02539-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEHAVIORAL TECHNOLOGIES CORP
Employer

OC: 11/21/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 17, 2011 (reference 03) decision that denied benefits. After due notice was issued, a hearing was held on April 6, 2011 in Des Moines, Iowa. Claimant participated with his father Jerald Russo, who also acted as his representative. Employer participated through director Virginia Bradish. Claimant's Exhibits A through C were admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time developmental specialist from November 26, 2008 and was separated on November 23, 2010. On that date he was tardy in reporting his absence due to illness because he had not been feeling well, drank Nyquil, and overslept. He called after his shift start time and spoke with the on-call manager. He had seen the doctor earlier that week and was diagnosed with a sinus infection and bronchitis. His physician excused him for a couple of days on November 16 but he worked as scheduled after that. He did not see the doctor again until after the discharge on November 23.

On May 3, 2010 he was warned in writing about attendance. He had attendance occurrences on December 9, 2009 (absent because of weather and the manager did not pick him up from the Merle Hay Mall area because he lived too far away), January 13, 2010 (tardy – tardiness of more than 15 minutes is counted as an absence), February 2 (absent), 19 (he called in advance of his shift to report his automobile broke down, but the employer did not pick him up and told him to take the day off), 25 (tardy), March 17 (absence), April 28 and 29 (absent took father to Iowa City for a medical issue), May 3 and 4 (absent due to minor child's injury), June 5 (tardy), 8 (tardy), 19, 20, 21, 22 (absent for a funeral), July 23 (absent due to illness), November 16 (absent medical excuse), 23, 2010 (final tardy). After July 23 he worked two of four allowable

absences off. He was tardy less than 15 minutes on 37 additional occasions. He had a lot of vehicle problems through early June 2010 that contributed to his tardiness.

If an individual misses a punch because of being delayed upon arrival at the building to help someone else, it may be reported to the supervisor who will adjust the time card. Claimant was assigned a house key to his house but not other houses he may have been assigned to work at and it was his responsibility to bring the key with him. He had problems with some managers not taking him seriously about these reports but did not pursue the issue up the chain of command. He could have gone above the supervisor's head to complain about a lower level supervisor not overriding the time card.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

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's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to 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 because he was tardy in reporting the absence. That he overslept because of self-administered over-the-counter medication does not excuse the tardy reporting. The final absence, in combination with the claimant's history of unexcused tardiness, is considered excessive. Benefits are withheld.

DECISION:

The February 17, 2011 (reference 03) decision is affirmed. The 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/pjs