

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANTHONY D LEWIS
Claimant

MARKETLINK INC
Employer

APPEAL 15A-UI-02330-KCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/11/15
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 February 16, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2015. The claimant participated. The employer participated through Shaylene Houston, human resources supervisor. Exhibit 1 was admitted into evidence.

ISSUE:

Was the claimant discharged for work-related, disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a telephone sales representative. He was hired on December 27, 2012, and was separated from employment on December 31, 2014, when his employment was terminated.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on December 26, 2014. He was last warned on November 1, 2014, that he faced termination from employment upon another incident of unexcused absenteeism. On fourteen occasions from November 18, 2014 to December 27, 2014, the claimant was late to work for a period of time between 10 minutes to 2 hours. (Exhibit 1)

The claimant had been injured in a motor vehicle accident in June 2014. Consequently, he underwent physical therapy. The claimant provided written documentation to his supervisor, Cassie Seals, of the dates that he would be late to work because of physical therapy appointments. The claimant identified four dates, during the relevant period of November through December 2014, that were related to physical therapy. The claimant acknowledged he was not timely to work on other occasions during that period because he was simply late.

During the period on which the employer relied to terminate the claimant for tardiness, the claimant called in to the employer and spoke with one of three potential supervisors on duty regarding being late to work. The three supervisors may not have communicated the claimant's calls. Nonetheless, the employer permitted employees to work additional time in order to offset any time that s/he did not work, as scheduled.

The claimant understood that he was fired because he had not worked at 93% of his scheduled number of hours, as required by the employer. The claimant did not work all the hours required by the employer and he did not work to offset the time that he was late to work during November and December of 2014.

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). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. 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 February 16, 2015, (reference 01) unemployment insurance 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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs