

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD CHREST
Claimant

APPEAL NO: 09A-UI-16689-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

OC: 02-15-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 26, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 11, 2009. The claimant participated in the hearing. Mary Dold, Employee Services Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time iron worker for A-Lert from April 5, 2009 to October 8, 2009. He was discharged for excessive unexcused absenteeism. The claimant was scheduled to work from 6:00 a.m. to 4:30 p.m., Monday through Friday and 5:00 a.m. or 6:00 a.m. to 2:30 p.m. or 4:30 p.m. on Saturdays. He lives two and one-half hours from the workplace. He asked the employer if he could be transferred to the Clinton location and the employer said it would try when it could but it did not work out prior to his termination. On July 1, 2009, the claimant was a no-call/no-show and received a written warning and three-day suspension. On September 28, 2009, the claimant was a no-call/no-show and on September 29, 2009, he was considered a no-call/no-show because he called in 45 minutes after the start of his shift. He received a four-day suspension for those absences. On October 8, 2009, the claimant was a no-call/no-show and called after the start of his shift and the employer terminated his employment. The claimant testified his family did not have a babysitter July 1, 2009, so he slept in rather than call the employer. He asked for some time off the week of September 28, 2009, because his child was having trouble at school but the employer did not grant his request because it was too busy. The claimant stated he stayed home with his child September 28, 2009, and did not call the employer and slept in September 29, 2009, but called the employer 45 minutes after the start of his shift and was told to stay home. He was absent October 8,

2009, because of problems with his child. He called in after the start of his shift and his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 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). While the claimant was in a difficult position considering the problems with his son and the two and one-half hour one-way drive to work, the employer is not responsible for the issues with his son and the claimant was aware of the commuting distance when he accepted the job. Regardless of those situations, the claimant had a responsibility to call in before the start of his shift and notify the employer when he would not be at work. He failed to do so on four occasions, including three times in ten working days. The employer has established that the claimant was suspended and 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 absenteeism, is considered excessive. Therefore, benefits are denied.

DECISION:

The October 26, 2009, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css