

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDERICK D CAREY
Claimant

APPEAL NO. 07A-UI-05151-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROVISIONS INC
Employer

**OC: 04-08-07 R: 03
Claimant: Appellant (1)**

871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 7, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on June 27, 2007. The claimant did participate. The employer did participate through Vicky Yokem, Supervisor.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a dishwasher full time beginning November 22, 2006 through January 8, 2007 when he was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on January 8, 2007 when he was late to work. The claimant was late to work because he stopped to pick up a coworker who was late. While it was admirable that the claimant wanted to help a coworker get to work, that does not allow him to be late to work. The claimant was last warned on December 28, 2006, that he faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on January 7, 2007 (late), December 28, 2006 (late), December 22, 2006 (no call-no show), and December 21, 2006 (late). The claimant was given a copy of the employer's attendance policy which provided that habitual lateness would result in discharge.

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 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).

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. 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. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. The claimant is not allowed to be late because he chose to pick up a coworker who was always late getting to work. Benefits are withheld.

DECISION:

The May 7, 2007, reference 02, 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs