

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSH R JOHNSON
Claimant

MANPOWER INTERNATIONAL INC
Employer

APPEAL 15A-UI-07710-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/24/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 2, 2015, (reference 04) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 3, 2015. Claimant participated. Employer participated through Associate Recruiter Gail Gonyaw.

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 assigned by employer to a position as a full-time fabricator at Siemens from April 23, 2015, and was separated from employment on June 18, 2015, when he was terminated. Claimant worked third shift.

On June 16, 2015, claimant was absent from work because his son broke his hand and he needed to take him to the doctor. On the morning of June 17, 2015, claimant was given a final warning regarding attendance. Employer's attendance policy states that after an employee incurs five points, he is terminated. An employee is given one point per absence. Claimant was aware he had four attendance points on June 17, 2015, and would be terminated for an additional absence.

Claimant left a voice message for employer on June 17, 2015, at approximately 10:30 p.m. stating his wife had a migraine headache and although he knew he would be terminated, he

would not be in to work that night. Claimant then brought his wife to the hospital to be treated for her migraine headache. Claimant was scheduled to work at 11:00 p.m. Claimant could have brought his wife for medical treatment earlier that evening and been able to attend work that night.

On June 18, 2015, Associate Recruiter Gail Gonyaw called claimant to confirm that he had been terminated.

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.

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 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. Although claimant missed work on June 17 to assist his wife in obtaining medical treatment, his absence is not excused. Knowing his job was in jeopardy, claimant could have brought his wife to obtain medical treatment earlier that evening and still attended work that night. Instead, claimant chose to miss work. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The July 2, 2015, (reference 04), 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.

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Decision Dated and Mailed

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