

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDWARD BEASON
Claimant

APPEAL 16A-UI-11827-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT HEINZ FOODS COMPANY
Employer

OC: 10/09/16
Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 26, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2016. Claimant participated. Employer participated through Rachel Przybylek, Human Resources Generalist. Employer's exhibits E-1 through E-10 were entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production team member from August 17, 2015 through October 10, 2016, when he was discharged. The claimant was given a copy of the employer's attendance policy when he was hired. He was not treated any differently than any other employee under the policy. On July 31 the claimant was given his final written warning. That warning put him on notice that if he accrued two more attendance points he would be discharged. On October 1 the claimant called in to take a personal day because he had car trouble and had no way to get to work. He accrued one point for missing work due to no transportation on that day. The claimant was late to work and accrued one-half point for August 17, 19, September 28 and September 30. The employer had previously investigated his allegations that he was not late on August 17 and 19 and determined that he was in fact late to work each of those days. Prior absences occurred as set out in the employer's exhibits.

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 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. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The October 26, 2016, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs