

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KORY M SCHWAN
Claimant

GMT CORPORATION
Employer

APPEAL 16A-UI-05926-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/15
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 May 16, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for repeated tardiness in reporting to work after being warned. The parties were properly notified of the hearing. A telephone hearing was held on June 14, 2016. The claimant, Kory M. Schwan, participated. The employer, GMT Corporation, participated through B.J. Kinard, human resource manager; and Roger Webb, operations superintendent. Employer's Exhibits A through K were received and admitted into the record over objection.

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 employed full time as a production welder from November 15, 2010 until this employment ended on April 12, 2016, when he was discharged due to absenteeism.

Claimant's final incident of absenteeism was a tardy arrival on April 12, 2016. Claimant was scheduled to work at 6:00 a.m. that day, and he punched in at 6:01 a.m. Claimant admits the time clock read 6:01 a.m. when he punched in but he claims the time clock was off by several minutes that day. The employer denies that any other employee raised this issue on April 12.

Claimant admits he was absent or tardy on the following prior occasions: March 9, 2016 (no-call/no-show); February 4, 2016 (late); January 14, 2016 (late); December 17, 2015 (late); and November 30, 2015 (late). The employer states claimant was also late on March 29, 2016 but claimant denies this. Claimant was aware his job was in jeopardy due to his attendance. While claimant testified that he did not have as many attendance points as the employer claims he had when he was discharged, claimant never raised this issue with the employer prior to his discharge. Kinard testified that the time clock shows employees how many attendance points they have each day when they punch in.

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. Benefits are withheld.

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.

Excessive absences are not considered misconduct unless unexcused. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law." The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's witnesses provided more credible testimony than claimant. Specifically, the administrative law judge does not believe that the employer's time clock was incorrect on claimant's final day of employment.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, 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 improperly reported or unexcused absences could result in termination of employment and claimant's final late arrival on April 12 was not properly reported or excused. Claimant's final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Regardless of the amount of points claimant had under the attendance policy, claimant admits he was aware his job was in jeopardy due to his attendance. The employer has established claimant was discharged for disqualifying job-related misconduct. Benefits are withheld.

DECISION:

The May 16, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as claimant is deemed to be eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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