

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUKE SNODGRASS

Claimant

APPEAL NO: 13A-UI-08794-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ECONOMY COATING SYSTEMS INC

Employer

OC: 07/07/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Luke Snodgrass (claimant) appealed an unemployment insurance decision dated July 29, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Economy Coating Systems, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 3, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Duane Sampson, Human Resources Assistant.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time painter helper from July 2, 2012 through July 9, 2013 when he was discharged from employment due to violation of the employer's attendance policy. The employer has a rolling 12-month attendance point system wherein employees are discharged if they accumulate ten points. The claimant received written warnings for attendance at 3.5 points on April 20, 2013; at 5.5 points on April 29, 2013; and at 7 points on May 10, 2013. He was last warned on May 20, 2013 that he faced termination from employment upon another incident of unexcused absenteeism since he was at 9 attendance points.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on July 9, 2013 for 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. 871 IAC 24.32(7).

The Iowa Supreme Court in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. The Court in the case of *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984) held that absences due to matters of "personal responsibility such as transportation problems and oversleeping are considered to be unexcused."

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 absenteeism, is considered excessive. Benefits are denied.

DECISION:

The unemployment insurance decision dated July 29, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs