

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PHILLIP L SIMMONS

Claimant

APPEAL 15A-UI-13535-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION

Employer

OC: 11/08/15

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 30, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2015. Claimant participated. Employer participated through Erin Montgomery, Plant Controller and was represented by Diana Perry-Lehr of Employer's Unity. Employer's Exhibit One was 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 an operator beginning on January 12, 2012 through November 9, 2015 when he was discharged.

The claimant was to be to work at 6:00 a.m. on November 7. He was late to work that day. He did not arrive at work until 6:40 a.m. He was late because he overslept due to a medication he was taking. He had no Family Medical Leave Act (FMLA) leave that would cover him being late to work. The claimant had been on the medication for a few months and knew the consequences of taking the medication. The claimant had last been warned about being tardy to work on October 22, 2015. The claimant was given a last-chance warning on October 22 as he had already reached termination for being late on October 21. At that time he was told that one more incident would lead to his discharge. His prior incident of tardiness occurred on August, 5, 14 and 20 and September 22, 28. The claimant had been given a copy of the employer's attendance policy. The claimant was not treated any differently than any other employee.

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).

The claimant did not have FMLA that would allow him to be late to work. He had prior warnings for being tardy and knew that it was his responsibility to be to work on time. Neither his relapse into methamphetamine use nor his separation nor his pending separation/divorce allow him to be late to work.

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 denied.

DECISION:

The November 30, 2015, (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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css