

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN P JEFFRIES
Claimant

APPEAL NO. 11A-UI-13242-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08-28-11
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 a timely appeal from the September 20, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 31, 2011. The claimant did participate. The employer did participate through Mike Wolf, Human Resources Manager and was represented by Paula Mack of Corporate Cost Control. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a night stock clerk part time beginning February 9, 2007 through August 24, 2011 when he was discharged. The claimant was discharged from employment due to a final incident of absenteeism that occurred on August 24, 2011 when he failed to report for work. He could not find a ride to work so did not show up. It was the claimant's responsibility to get himself to and from the workplace; the employer was not obligated to provide him with a means to get to and from work. The claimant was last warned on June 23, 2011, that he faced termination from employment upon another incident of unexcused absenteeism. Prior absences and warnings, including a prior suspension occurred as set out in Employer's Exhibit One.

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.

871 IAC 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 September 20, 2011 (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