

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRENT L SHAFFER
Claimant

APPEAL NO: 15A-UI-01783-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 01/11/15
Claimant: Appellant (1)

Section 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 January 30, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 12, 2015. The claimant participated in the hearing. Theresa McLaughlin, Human Resources Manager and John Angle, Market Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time market clerk for Fareway from May 22, 2013 to January 10, 2015. He was discharged from employment due to a final incident of absenteeism that occurred on January 10, 2015.

The claimant was one minute late January 2, 2014; two minutes late January 3, 2014; one minute late January 4, 2014; two minutes late January 7, 2014; four minutes late January 8, 2014; one minute late January 9, 11, 18, 21, 22, 27, and 31, 2014; two minutes late February 1, 2014; five minutes late February 4, 2014; two minutes late February 17, 2014; one minute late February 18, 2014; five minutes late February 24, 2014; one minute late March 7 and 24, April 5, 14, and 16, May 3, 10, 16, and 17, June 9 and 17, July 22, 24, 25, and 26, August 1, 5, 7, and 8, 2014; two minutes late August 13, 2014; one minute late August 23 and 25, September 6, October 2, 3, and 13, November 15, and December 4 and 19, 2014.

On January 10, 2015 the claimant arrived approximately ten minutes late and Market Manager John Angle noticed he did not appear to be in any hurry once he arrived in the store but before he made his way to his department. Mr. Angle asked him why he was late but the claimant did not offer an excuse for his tardiness or apologize for being late. At that time Mr. Angle decided "enough is enough" and notified the claimant his employment was terminated.

The claimant received a written warning May 28, 2013, after he arrived a few minutes late, had trouble with the time clock, and was not on the floor until ten minutes after the scheduled start time of his shift (Employer's Exhibit Five). The warning stated that "punctuality is mandatory and being late is not tolerated. Being late will result in termination immediately" (Employer's Exhibit Five). That warning was issued by the market manager previous to Mr. Angle. The claimant received a written warning for a no-call/no-show August 5, 2013 (Employer's Exhibit Four). Mr. Angle issued the claimant several verbal warnings about his tardiness and believed he could work with the claimant on his punctuality. Mr. Angle also required the claimant to write an essay stating "Why I Should Keep My Job" (date unknown) (Employer's Exhibit Three). The claimant started the essay by stating "I want to admit that I've been in the wrong on being late all of the time. You guys have given me ample time to improve on it and keep my job" (Employer's Exhibit Three); he then went on to state he was a hard worker and worked well with his co-workers as well as being available to work whenever the employer needed a shift covered (Employer's Exhibit Three).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 was tardy on 47 occasions between January 2, 2014 and January 10, 2015. While most of his incidents of tardiness were of one to two minutes in duration, he was not at work and ready to begin his shift at the time he was scheduled and did not provide any explanation for his tardiness or apologize to Mr. Angle for being late. Although it may not seem like a big deal to the claimant if he is a couple minutes late, habitual tardiness shows disrespect toward the employer, co-workers, and the job in general. The claimant could not provide any good cause reasons for his tardiness which leads to the conclusion he did not make punctuality

a priority. In most jobs, the first cornerstone to success, and one of the first impressions made, is reliability and being on time. If an employee cannot demonstrate that to an employer he is unlikely to be able to sustain that employment, regardless of whether he is a hard worker once he arrives. In this case, the employer was surprisingly lenient with regard to the claimant's tardiness, believing it could resolve the problem as it would take such a small effort on the part of the claimant to arrive five minutes earlier for his shifts but instead the problem persisted.

The employer has established that the claimant was verbally warned about his tardiness and his final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

DECISION:

The January 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/can