

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DARRIUS L ROWE
Claimant

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

APPEAL 15A-UI-08676-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/12/15
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 July 31, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2015. The claimant participated personally. The employer participated through Ashley Lippold. Thad Slicker also testified for the employer, and Julie Akers was an observer. Employer Exhibits One through Six were admitted into evidence.

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: The claimant was employed part-time as an outbound materials handler and was separated from employment on July 16, 2015, when he was discharged.

The employer has an attendance policy which requires notification of absences 30 minutes prior to a shift start (Employer Exhibit 3A). One instance of no-call/no-show will result in a final warning (Employer Exhibit 3C). The claimant was made aware of the employer's policies at hire (Employer Exhibit 4). The claimant received two warnings, including a final warning, on August 28, 2014, for attendance (Employer Exhibits 1 and 1A). The claimant also had received notification of his attendance needing improvement on two performance reviews on both October 16, 2014 (Employer Exhibit 6) and April 14, 2015 (Employer Exhibit 6).

After the final warning was issued for attendance, the claimant called in two additional times between July 1 and 13, 2015 due to transportation issues, but was not disciplined. In these two cases, the claimant timely notified the employer that he was having transportation issues and ultimately came into work, but was tardy. The final incident occurred on July 14, 2015. There

was disputed evidence presented whether the claimant properly called off the absence or was a no-call/no-show for not speaking to the employer prior to the shift, but the claimant did not come late or at all, for the shift that day due to continued transportation issues. He was subsequently discharged on July 16, 2015 (Employer Exhibit 2).

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. Even if the claimant timely called off work, his absence was not excused based on the reason offered. The claimant had three attendance occurrences after his final warning with respect to his transportation issues. The employer elected to not discharge him immediately because for the first and second incidents, he showed up to work, albeit tardy. The third incident within a two-week period occurred on July 14, 2015, when the claimant again did not have transportation, and in this case, missed the entire shift. The employer has credibly 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 July 31, 2015, (reference 01) unemployment insurance 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs