

2004. He was discharged due to his attendance record. The claimant's employment was terminated August 3, 2004, but, with the union's agreement, the employer gave the claimant one last chance and he returned to work August 30, 2004. On September 13, 2004, the claimant was absent and called in to report he would not be in because he was in jail; on September 27, 2004, he was tardy; on October 12 and 13, 2004, the claimant was ill and properly reported his absences; on October 14, 2004, the claimant was a no-call/no-show; on October 21, 2004, the claimant was a no-call/no-show; and on October 26, 2004, the claimant was three hours late. When the claimant reported for work October 26, 2004, the employer asked for an explanation for his no-call/no-show October 21, 2004, and the claimant stated he had a toothache and could not call because he was in pain and he stated he overslept October 26, 2004, because his medication made him tired. The employer terminated his employment October 26, 2004, for violating the last chance attendance agreement.

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 section 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(1)a provides:

Discharge for misconduct.

(1) Definition.

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. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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). The claimant was given a last chance attendance agreement when he was allowed to return to work August 30, 2004. Between that date and October 26, 2004, however, the claimant was absent or tardy seven times. While two of those dates were apparently due to properly reported illness, one was the result of the claimant being in jail, and three were incidents of tardiness where he failed to call in and report that he would be late. On October 21, 2004, the claimant was a no-call/no-show, and on October 26, 2004, he was three hours late. While the claimant may have had a toothache October 21, 2004, and overslept because of his medication October 26, 2004, that does not relieve him of the responsibility of calling the employer and properly reporting his absences, especially in light of the fact he was on a last chance attendance agreement. 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. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Benefits are denied.

DECISION:

The August 26, 2005, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

je/kjw