

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

WILLIAM D MARE
Claimant

APPEAL NO: 19R-UI-00126-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 11/04/18
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 November 20, 2018, 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 January 22, 2019. The claimant participated in the hearing with CTS Language Link Interpreter Peter (PEMN). Jeaneth Ibarra, Human Resources Manager, participated in the hearing on behalf of the employer.

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 full-time production worker for Tyson Fresh Meats, Inc. from November 29, 2005 to August 30, 2018. He was discharged from employment due to a final incident of absenteeism that occurred from August 17 through October 2, 2018.

The claimant requested a personal leave of absence to visit his mother in Kenya from July 16 through August 16, 2018. The claimant had not returned by August 30, 2018, and the employer terminated his employment. Under the employer's policy, an employee must return on his return to work date or communicate with the employer and let it know he needs to extend his leave. The claimant's mother was in a refugee camp and it was difficult to find a fax machine, computer or phone to contact the employer. Consequently, he did not notify the employer he needed more time before his return October 2, 2018.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 requested a one month personal leave of absence to visit his mother in Kenya but was gone two and one-half months without notifying the employer. After waiting two weeks to hear from the claimant, the employer terminated his employment as it did not know if or when he planned to return. While the claimant had a good personal reason for his absence, his failure to notify the employer of his need for an extension of his leave of absence for over six weeks is unreasonable. Therefore, benefits must be denied.

DECISION:

The November 20, 2018, 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/scn