

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER J MILLER
Claimant

APPEAL NO. 17A-UI-06930-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMVC EMPLOYEE SERVICES LLC
Employer

OC: 10/09/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Christopher Miller (claimant) appealed a representative's July 7, 2017, decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with AMVC Employee Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 26, 2017. The claimant participated personally. The employer participated by Michelle Shook, Human Resources Director. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 19, 2016, as a full-time swine specialist. The claimant signed for receipt of the employer's handbook on December 19, 2016. The handbook states that absences must be reported to a manager at least thirty minutes prior to the start of the shift. Three unexcused absences could result in termination.

The claimant's shift started at 6:00 a.m. but he usually arrived at 5:30 a.m. The claimant called in absent due to lack of transportation on January 17, 2017. On April 3, 2017, the employer issued the claimant a written warning for tardiness because the claimant overslept on April 1, 2017. The employer issued the claimant a verbal warning on April 3, 2017, for leaving work early on April 1, 2017. On April 18, 2017, the employer issued the claimant a written warning for failure to properly report an absence. The employer notified the claimant in all three warnings that further infractions could result in termination from employment. On April 28, 2017, he told the employer he could not work because it was snowing. On May 30, 2017, the claimant did not properly report his absence due to illness.

On June 6, 2017, the claimant overslept. The claimant woke up and called the employer. The employer terminated the claimant for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified 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 representative's July 7, 2017, decision (reference 04) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs