

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JERMAINE D TYLER
Claimant

IOWA PREMIUM BEEF LLC
Employer

APPEAL 15A-UI-05114-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/25/15
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 April 24, 2015, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on June 2, 2015. The claimant participated. The employer participated through Doug Baker.

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 full-time as a general laborer and was separated from employment on April 10, 2015, when he was discharged.

The employer has an attendance policy which only permits six points in an employee's first 90-days of employment. Points are accrued based on absences from work, regardless of reason. After the 90-day probationary period ends, an employee is permitted to have up to 12 attendance points in a rolling 12-month period. The claimant was made aware of the employer's policy at the time of hire on March 10, 2015. The claimant was also issued a warning on April 1, 2015, that he was at six points and any future occurrences during his probationary period would result in separation. The claimant's six points had been the result of four absences in his first two weeks of employment. The claimant signed the warning in the presence of human resources. The evidence is disputed as to whether the claimant missed two or three of his shifts between April 7 through 9, but he missed at least two due to transportation issues. There was also disputed evidence as to whether his absences would be considered no-call/no-shows, which are worth three points each, versus a properly called off absence, which only is two points. Either way, the claimant accrued between four and nine additional points for missing shifts between April 7 through 9, which is more than six points. Upon receiving a ride from his neighbor to pick up his paycheck, the claimant was discharged.

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. The claimant's final absences were due to transportation issues. The claimant was aware his job was in jeopardy based on the accrual of six points prior to the final absences during April 7 through 9, 2015. Further, recognizing that his job was in jeopardy, the claimant could have planned for transportation in order to prevent future absences as he had experienced transportation issues on multiple occasions. The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The April 24, 2015, (reference 02) 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