

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS L PREYEAR
Claimant

APPEAL NO. 08A-UI-02247-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

**OC: 02/03/08 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Thomas Preyear filed an appeal from a representative's decision dated February 29, 2008, reference 01, which denied benefits based on his separation from Schenker Logistics, Inc. (Schenker). After due notice was issued, a hearing was held by telephone on March 20, 2008. Mr. Preyear participated personally. The employer participated by Rick Talcott, Human Resources Manager.

ISSUE:

At issue in this matter is whether Mr. Preyear was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Preyear was employed by Schenker from November 19, 2007 until January 29, 2008 as a full-time case pick operator. He worked for the company through a temporary placement firm from July 23, 2007 until he was hired on as a regular employee in November. Mr. Preyear was discharged because of his attendance.

Mr. Preyear was late reporting to work on November 20. He had other absences and received a written warning regarding attendance on December 10. He was also late on December 13 but was not assessed attendance points. He was absent on December 24 because his car went into a ditch on the way to work. Mr. Preyear was absent January 19, 21, and 22 because of car problems. He was only assessed attendance points for the first day, January 19. The decision to discharge was made after Mr. Preyear was absent without calling in on January 26. He called on January 27 and 28 to report that he would be absent due to car trouble. He was notified of his discharge on January 29. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Mr. Preyear was employed by Schenker for slightly over two months. During that time, he was absent on a number of occasions but the employer did not always assess attendance points. He received points when he left early on December 10 and when he was absent due to an ice storm on December 11. He had permission to leave early on December 10 and the circumstances of his absence on December 11 were beyond his control. Therefore, although he received points, the absences are excused. The occasions on which Mr. Preyear received points when he was absent due to illness are also excused as illness is a reasonable cause for being absent.

Mr. Preyear had one occasion of tardiness that was not excused by the employer, November 20. He was absent on January 19 due to car problems. Absences caused by matters of purely personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Preyear also had an unreported absence of January 26. Because there was no justification for the failure to call the employer, the absence is unexcused. He knew from the warning of December 10 that his attendance was jeopardizing his continued employment with Schenker.

The evidence of record establishes at least three periods of unexcused absenteeism during the two months Mr. Preyear was with Schenker. The administrative law judge considers this excessive, especially in light of the fact that the employer did not count against him all of the absences that would otherwise be unexcused. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated February 29, 2008, reference 01, is hereby affirmed. Mr. Preyear was discharged by Schenker for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs