

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND BURKE
Claimant

APPEAL NO. 07A-UI-00778-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE DEXTER COMPANY
Employer

**OC: 12-17-06 R: 03
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 January 10, 2007, 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 February 7, 2007. The claimant participated in the hearing. Kathy Baker, Human Resources Secretary, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

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 laundry laborer for The Dexter Company from April 1, 2002 to December 19, 2006. He was discharged from employment due to a final incident of absenteeism that occurred on December 18, 2006. The employer's policy requires employees to call in prior to the start of their shift, give the reason for their absence and state when they will return (Employer's Exhibit One). The claimant was warned about his attendance February 26, 2003; April 10, 2003; January 12, 2004; March 24, 2005; July 3, 2005; August 11, 2005; September 13, 2005; December 21, 2005; January 26, 2006; May 15, 2006; June 1, 2006; October 2, 2006; October 4, 2006; October 20, 2006; and December 18, 2006 (Employer's Exhibits Two and Three). Four of those warnings occurred because the claimant did not call in and report his absence with the last no-call/no-show October 20, 2006 (Employer's Exhibit Two). There is no evidence that these absences were related to illness. The claimant had received a last chance agreement June 1, 2006 (Employer's Exhibit Two). On December 18, 2006, the claimant experienced car problems and did not call in or report for work prior to the start of his shift. He was suspended pending further investigation and his employment was terminated December 19, 2006, for excessive unexcused absenteeism.

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:

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(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 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. Benefits are withheld.

DECISION:

The January 10, 2007, 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/css