

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN K BARLOW
Claimant

VAN DIEST SUPPLY CO
Employer

APPEAL NO. 10A-UI-00077-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated December 22, 2009, reference 01, that held the claimant was discharged for excessive unexcused absenteeism on November 13, 2009, and benefits are denied. A telephone hearing was held on February 12, 2010. The claimant participated. Carolyn Cross, A, and Clark Vold, A, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time production employee from November 24, 2008 to November 13, 2009. The employer has an attendance policy that was provided to the claimant at the time of hire. Employees begin employment with eight points, and points are deducted for attendance issues. An employee who reaches the level of zero points is subject to termination. The employer notifies an employee of the point level with the issuance of each pay check. An employee may earn one-half a point for perfect attendance during a 30-day period.

The claimant received a disciplinary warning with a pay reduction for attendance issues that reduced his point level to two on July 24, 2009. The claimant lost a point due to an absence on November 5, and he was terminated on November 13, 2009 for a no-call/no-show to work that left him at zero points. The claimant overslept for the start of his shift at 3:00 p.m., and when he awoke at 5:30 p.m., he did not call, because he concluded he would be terminated.

Although the employer counts a point for an absence due to illness (the claimant had three), it does not deduct a point for the final incident, if the employee provides a doctor's excuse.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes that the employer established a current act and misconduct in the discharge of the claimant on November 13, 2009, for excessive "unexcused" absenteeism. The misconduct is the knowing violations of the employer attendance policy.

The most recent incident was a no-call/no-show to work, and the claimant had the opportunity to call the employer after oversleeping that is the current act. If the claimant had produced a doctor's excuse that he missed work due to illness that also was related to his oversleeping, he might have saved his job. While the absenteeism relied upon by the employer does consider some excusable conduct involving properly reported illness (#3 occurrences), the record as whole does establish excessive unexcused absenteeism, especially when the claimant could have earned points for a 30-day, no attendance issue period.

DECISION:

The decision of the representative dated December 22, 2009, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on November 13, 2009.

Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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