

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KILO JACKSON**  
Claimant

**APPEAL NO. 08A-UI-07012-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARKETLINK INC**  
Employer

**OC: 07/06/08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Kilo Jackson filed a timely appeal from an unemployment insurance decision dated July 29, 2008, reference 01, that disqualified him for benefits upon a finding that he had been discharged for excessive unexcused absenteeism. After due notice was issued, a telephone hearing was held August 18, 2008 with Mr. Jackson participating. Office Manager Angela Hough and Team Manager Daniel Bern participated for the employer, Marketlink, Inc. Employer Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for excessive unexcused absenteeism?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kilo Jackson was employed as a telephone service representative by Marketlink, Inc. from December 26, 2007 until he was discharged June 30, 2008. He was discharged because of poor attendance. Mr. Jackson was absent without contact on June 30, 2008. He did not report to work that day because of car problems. He was tardy on June 18, 2008 because of car trouble. He was also tardy on June 5 for the same reason. He was absent for partial days on March 31, April 1 and April 3 because of car problems, and he was absent part of the day on March 26, 2008 because of a court appearance. He was late on February 14 and 15; he was also tardy on January 18, February 15 and February 19 because of transportation issues. Neither he nor the employer recalls why he was absent on January 10 and January 17, 2008. Mr. Jackson received several warnings and a suspension because of attendance problems.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Although absence due to medical conditions properly reported to the employer are not considered to be misconduct for unemployment insurance purposes, absence because of matters of personal responsibility such as transportation are considered misconduct whether or not the employee reports the absence in advance to the employer. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The evidence in this record establishes a pattern of absence and tardiness because of attendance problems culminating in a final incident on June 30, 2008. The number of incidents in a six-month period is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated July 29, 2008, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs