

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM MADISON
Claimant

APPEAL NO: 12A-UI-08833-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MTS IOWA INC
Employer

OC: 07-01-12
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 July 20, 2012, 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 August 16, 2012. The claimant participated in the hearing. Doug Strobel, Department Supervisor; Brad Turner, Operations Manager; and Dennis Peterson, Employer Representative, participated in the hearing on behalf of the employer.

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 detailer for MTS Iowa from August 31, 2009 to July 2, 2012. The claimant was absent February 2 and April 13, 2012, and left early, working 3.9 hours January 13; 1.9 hours February 29; 2.65 hours March 5; 5.75 hours March 27; 3.10 hours April 3; 4.75 hours April 5; 4.50 hours April 27; and 5.18 hours June 22, 2012. On June 26, 2012, the claimant told Department Supervisor Doug Strobel he was leaving early June 27, 2012, because his son had trouble with the heat on the drive between Altoona and the east side of Des Moines. Mr. Strobel told him he could not give him permission to leave and he would have to go through the office. The claimant left three and one-half hours early June 27, 2012, without notifying Mr. Strobel or Operations Manager Brad Turner, and used the last of his paid time off (PTO). The employer was upset about his absence because it had a large work order to be done and the claimant left without notifying anyone specifically on that day. On June 28, 2012, the claimant called Mike Knox, an office employee, and stated he would not be in because he was experiencing car problems. On June 29, 2012, he called Mr. Turner and again said he would not be in because he had no transportation. The employer held a company meeting January 10, 2012, to explain the new PTO system and stated disciplinary action would occur after an employee used his PTO. The employer had talked to the claimant several times about his attendance and the importance of being at work and when it conducted his performance review in May 2012 the employer brought up the claimant's attendance and gave

him a smaller raise than others in the same position because of his attendance. After reviewing the claimant's attendance record and considering his last three absences, the employer terminated his employment July 2, 2012.

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 claimant left early on eight occasions between January 13 and June 22, 2012, before leaving without notifying anyone after working three and one-half hours June 27, 2012. He was then absent the following two days due to transportation issues. While the employer does not issue written warnings, it did tell all employees if they exceeded their allowed amount of PTO they would face disciplinary action and the employer talked to the claimant specifically about his attendance on several occasions, including during his review in May 2012. The employer has established that the claimant was warned about his attendance and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The July 20, 2012, 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/pjs