

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDER DUNCAN
Claimant

APPEAL NO. 06A-UI-11824-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LARAMY-K OPTICAL INC
Employer

OC: 11-12-06 R: 02
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 December 8, 2006, 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 December 27, 2006. The claimant participated in the hearing. John Larson, General Manager, 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 lab technician for Laramy-K Optical from May 6, 2005 to October 16, 2006. On January 10 and April 10, 2006, he was 20 minutes late for his 7:00 a.m. shift; on April 17, 2006, he was 10 minutes late; on June 7, 2006, he was 15 minutes late; on August 7, 2006, he was 30 minutes late; on August 23, 2006, he was 15 minutes late; and on September 6, 2006, he was late. On October 9, 2006, the claimant's supervisor verbally warned him that his tardies were excessive and if he was tardy again he would be suspended. On October 10, 2006, the claimant called in at 7:30 a.m. for his 7:00 a.m. shift and was suspended until October 16, 2006. On October 16, 2006, the claimant called in at 8:10 a.m. for his 7:00 a.m. shift and the employer terminated his employment for excessive unexcused tardiness. The employer's policy states that after eight incidents of tardiness within the calendar year employees will be suspended and any incidents after that would result in termination. There is no evidence that these absences were related to illness.

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 was warned about his tardiness October 9, 2006, and was 30 minutes late the following day and was subsequently suspended because of excessive unexcused absenteeism. On the day he was to return from his suspension the claimant called one hour and 10 minutes late and his employment was terminated. 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 denied.

DECISION:

The December 8, 2006, 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