

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUN N WEEKS
Claimant

APPEAL NO. 10A-UI-07990-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

OC: 04-25-10
Claimant: Appellant (1)

Iowa Code § 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 May 24, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 20, 2010. The claimant did participate. The employer did participate through (representative) John Noll, Employee Relations Manager and Tony Quesinberry, Distribution Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a technical analyst full time beginning December 4, 2000 through April 8, 2010 when he was discharged. The claimant was repeatedly late for work. He was warned repeatedly that his tardiness was placing his job in jeopardy. On April 7, 2010 the claimant was given his final warning that his job was in jeopardy due to his tardiness and that if he had one more instance of tardiness he would be let go. The employer moved the claimant's start time to 8:30 a.m. in order to give him more time to get to work. The claimant was 25 minutes late to work on the very next day after his final warning due to car problems.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on April 8, 2010. The claimant was last warned on April 7, 2010, that he faced termination from employment upon another incident of unexcused absenteeism. Prior absences and warnings occurred as set out in Employer's Exhibit One.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The May 24, 2010 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css