IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

FREDDIE L HILL Claimant **WHIRLPOOL CORPORATION** Employer	**APPEAL 15A-UI-02883-KCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/21/14** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 19, 2015 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 8, 2015. The claimant participated. The employer's representative sent a request for postponement of the hearing due to the unavailability of a witness. The employer did not provide a reason why no witness could testify regarding this matter. The employer did not register or participate. The request for postponement is denied. The employer submitted documents into evidence to which the claimant had no objection regarding admission. Exhibit 1 was received into evidence.

ISSUE:

Was the claimant discharged for work-related, disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a material handler and was separated from employment on February 6, 2015 when his employment was terminated.

Claimant was discharged from employment due to a final incident of absenteeism that occurred on February 5, 2015.

The claimant incurred repeated written warnings for absenteeism in 2014. He was suspended without pay for the period of March 7, 2014 through April 14, 2014 due to excessive absenteeism. After the union filed a grievance on his behalf, the employer, the claimant and the union representative entered into a last chance agreement dated April 14, 2014. The agreement provided that for the period beginning six months after the effective date of the last chance agreement, the claimant could not have further attendance related incidents or he would face immediate discharge without further warning (Exhibit One).

The claimant had written warnings for attendance and absenteeism on September 29, 2014 for a total of seven absences including leaving early and not calling in. He received another written warning on November 12, 2014. On November 3 and 5, he called in to say he would be absent to take care of his hospitalized child. He called in sick on November 6 and 7 because he did not feel well. On January 31,2015, the claimant was identified as not calling in or showing up to work. The claimant thinks he did call in using his cellphone on that date. In February 2015, he had vehicle problems and called in to report his inability to work on February 2 and 4. He bought a replacement vehicle on February 5, 2015 and reported to work the next day. The employer representative spoke to him on February 6, 2105 and told him that his employment had ended effective that day due to excessive absences (Exhibit One and Testimony).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

Iowa Admin. Code r. 871-24.32(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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep’t of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer’s attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The claimant served an unpaid suspension due to absences and tardiness in 2014. Thereafter, the claimant had a last chance agreement with the employer that identified

termination as a consequence of additional absences. His inability to get transportation to work for several consecutive days in February 2015 were the final absences and were not for an excused reason. In combination with claimant's history of unexcused absenteeism, and the unexcused final absence, the claimant's absences were excessive. Benefits are withheld.

DECISION:

The February 19, 2015 (reference 02) unemployment insurance 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.

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Kristin A. Collinson
Administrative Law Judge

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Decision Dated and Mailed

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