

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GATHAK D REATH
Claimant

DIAMOND JO WORTH LLC
Employer

APPEAL NO. 14A-UI-07469-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/15/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Gathak Reath (claimant) appealed an unemployment insurance decision dated July 17, 2014 (reference 02) which held that he was not eligible for unemployment insurance benefits because he was discharged from Diamond Jo Worth, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 13, 2014. The claimant participated in the hearing. Dhoal Larjin interpreted on behalf of the claimant. The employer participated through Nancy Vine, Director of Human Resources, and Thomas Kuiper, Hearings Representative.

ISSUE:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time housekeeper from May 17, 2012 through May 30, 2014. He was discharged from employment due to violation of the employer's attendance policy, with a final incident on May 29, 2014. The claimant was last warned on May 28, 2014 that he faced termination from employment upon another incident of unexcused absenteeism. The employer's attendance policy provides that employees will be discharged if they accumulate 12 attendance points in a 12-month period. The claimant received a warning for six points on both January 16, 2014 and March 21, 2014. Points roll off after 12 months. The claimant received a warning for eight points on both March 27, 2014 and May 15, 2014.

The claimant left early from work on September 30, 2013 and was absent due to illness on October 30, 2013. He was tardy on November 5 and November 11, 2013. He was absent due to transportation on January 6, absent due to weather on March 5, and absent due to illness on April 16, 2014. He was tardy in 2014 on the following dates: January 3, February 5, February 23, March 20, May 11, May 23, May 25, and May 28. After receiving his final warning on May 28, 2014 he called in his absence on May 29, 2014 and reported he had to take his sister to the hospital. The employer was unaware of any details but in the hearing today,

the claimant vehemently denied taking any family member to the hospital. However, he also denied that he was absent and/or tardy at any time. The claimant had ten and a half points on May 28, 2014 and his final absence added another point and a half. The claimant was discharged at 12 attendance points.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on May 30, 2014, for 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. 871 IAC 24.32(7). In order for absenteeism to be considered misconduct, the absences must be both excessive and unexcused.

The Iowa Supreme Court in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. The Court in the case of *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984) held that absences due to matters of "personal responsibility such as transportation problems and oversleeping are considered to be unexcused."

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 unemployment insurance decision dated July 17, 2014 (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times he weekly benefit amount, provided his is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

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