

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD PARKER
Claimant

APPEAL NO: 12A-UI-12604-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 09-30-12
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 October 16, 2012, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on November 19, 2012. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but that number was busy between 8:30 and 8:40 a.m. and the employer did not call in before the record was closed, did not participate in the hearing and did not request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for disqualifying job 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 shipping and inventory employee for Cargill from May 7, 2008 to September 13, 2012. The claimant was hired for the 6:00 p.m. to 2:00 a.m. shift. The claimant and his girlfriend had a child approximately one year ago. His girlfriend moved to Chicago and returned in July 2012, dropped the child off with the claimant, stated she was going to visit her parents, and did not return for two to three days, causing the claimant to miss a day or two of work. On September 11 or 12, 2012, the claimant's girlfriend came back from Chicago, stated she was tired of caring for the child, it was the claimant's daughter and he was going to raise her. The claimant had five out of a possible six attendance points at that time and called the employer to report his absences for the next three to four days because he could not find affordable or trustworthy childcare but knew he exceeded the allowed number of attendance points. He spoke to his supervisor and explained the situation but he said the employer would do what it needed to do and the claimant should do the same. The employer sent the claimant a letter November 17, 2012, stating the claimant voluntarily quit his job November 16, 2012. The claimant's girlfriend returned approximately two weeks ago and the claimant is now able and available for work.

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). While the claimant was placed in a difficult personal situation as his absences, exceeding ten days, were due to his inability to find childcare for his one-year-old daughter, which caused him to surpass the allowed number of attendance points, his absences are not considered excused under Iowa law. The claimant's other five absences were due to conflicts with co-workers and illness but the final absence was related to lack of childcare. Under these circumstances, the claimant's actions in exceeding the allowed number of attendance points constitutes disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be denied.

DECISION:

The October 16, 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/css