

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT SANDERS
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 15A-UI-01351-KCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 1/11/15
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 January 23, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 24, 2015. The claimant participated. The employer participated through Carrie Jaster. Employer's Exhibit 1 was admitted 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 an assembler and was separated from employment on November 24, 2014. The claimant received disciplinary notices in April, October and November of 2014. He received a written warning in October 2014 for irregular attendance with the ultimate, unexcused absence on October 23, 2014. The employer gave the claimant a second written warning on November 10, 2014, which also resulted in a half-day suspension on November 12, 2014. The claimant was warned that he faced termination if he incurred another incident of unexcused absence.

Article 20.2 of the contract between the employer and the employee's union provides that irregular attendance or repeated tardiness may result in warnings, suspension or discharge. (Exhibit 1) The claimant received a copy of the contract when he was hired.

The claimant had some absences that were related to caring for his fiancée. The employer determined that those absences were not covered under the Family Medical Leave Act and were not excused absences.

His employment was terminated on November 24, 2014 based on unexcused absences from November 18 - 21, 2014. The claimant was absent on those dates due to transportation problems. His final incident of absenteeism occurred on November 21, 2014. Prior to his last unexcused absence, the claimant's most recent unexcused absences occurred on four days in August, two days in September, five days in October, and three days in November 2014.

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.

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 final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The January 23, 2015, (reference 01) unemployment insurance decision is affirmed. 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.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs