

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL C MITCHELL
Claimant

APPEAL NO. 13A-UI-01784-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAWN MANUFACTURING INC
Employer

OC: 12/30/12
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 February 4, 2013, reference 04, decision that denied benefits. After due notice was issued, an in-person hearing was held on March 13, 2013 in Des Moines, Iowa. The claimant did participate. The employer did participate through Lisa Merten, Director of Human Resources.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed at Fawn Manufacturing as a press operator and assembler full time beginning October 17, 2012 through December 28, 2012 when he was discharged for excessive absenteeism. The claimant was to work at 7:30 a.m. on December 20. When employees are going to miss work they are to call a telephone number to leave a message that they will not be into work. The claimant was given a copy of the employer's written attendance policy and had been warned that his poor attendance was placing his job in jeopardy. The claimant was considered a probationary employee for the first four months of his employment and was operating under that portion of the employer's attendance policy. The claimant did call in to report he was going to be absent on December 20 and was then late on December 28 due to transportation problems. During the two months of his employment the claimant had seven days of absence that were not excused. Additionally, he also quit work early on three occasions and was late to work on three occasions. The claimant had thirteen unexcused absences in just two short months of employment.

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 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).

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 February 4, 2013 (reference 04) 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/tll