

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOVELL A ASH

Claimant

APPEAL NO. 12A-UI-09815-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEST BUY STORES LP

Employer

OC: 07/15/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lovell Ash (claimant) appealed a representative's August 3, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Best Buy Stores (employer) for excessive unexcused absenteeism after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 6, 2012. The claimant participated personally. The employer was represented by Robin Moore, Hearings Representative, and participated by David Parson, Home Sales Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 20, 2011, and at the end of his employment he was working as a full-time sales consultant in the home theater department. The claimant signed for receipt of the employer's handbook on June 20, 2011. The employer issued the claimant written warnings on March 11 and April 29, 2012, for tardiness. The claimant was tardy five times. He was tardy anywhere from 19 minutes to one hour and 59 minutes. The employer notified the claimant that further infractions could result in termination from employment.

On July 6, 2012, the claimant left work early because his fiancée was in a car accident. He took his fiancée home that evening. On July 7, 2012, the claimant knew he had a mandatory meeting but did not appear or notify the employer of his absence. The number to report absences 24 hours a day is posted in the break room and available on the internet from home. Later in the afternoon on July 7, 2012, the claimant reported for his shift. He told the employer that he did not have a babysitter for his two daughters or anyone to sit with his fiancée for the morning mandatory meeting. The employer terminated the claimant on July 13, 2012, for excessive absences.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 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 because it was not properly reported. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's August 3, 2012 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs