

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUBREY E GILLARD
Claimant

APPEAL NO. 08A-UI-09433-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING
Employer

OC: 06/22/08 R: 02
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 October 9, 2008, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 30, 2008. Claimant participated. Employer participated through Elizabeth Jerome.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time laborer at Titan Tire from May 13, 2008 until August 4, 2008 when he was discharged. His last day of work was August 1. On August 2 he called in saying he would not be at work for mandatory overtime because he was taking his daughter to the emergency room. He was not sure his team was scheduled to work that weekend so he called in anyway. He overslept after being at the hospital most of the night and was a no call-no show on Sunday, August 3 for the entire shift. He was tardy on June 18 and left early due to illness; on July 9 he was tardy by 1 hour and 9 minutes; on July 17 he was one hour tardy; July 21 he called in absent without a reason; and on July 24 he was issued a written warning about attendance. At some point during the employment he gave a letter to night supervisor Levi from his treating physician, Dr. Seo, who wrote that claimant was recently diagnosed as a diabetic and he has symptoms of fatigue. Jacobson Staffing supervisor for Titan Tire, Nate, acknowledged receipt to claimant.

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.

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 unreported 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 October 9, 2008, reference 02, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs