

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MITCH LIDDLE
Claimant

APPEAL NO: 13A-UI-13932-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KERRY INC
Employer

OC: 11/17/13
Claimant: Appellant (1)

Iowa Code § 96.5-2-a - Discharge for Misconduct
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Mitch Liddle (claimant) appealed an unemployment insurance decision dated December 10, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Kerry, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 8, 2014. The claimant participated in the hearing. The employer participated through Production and Maintenance Manager Jamie Stevens and Jeri Rethamel, Human Resources. Employer's Exhibits One through Eight and Claimant's Exhibit A and B were admitted into evidence.

ISSUE:

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

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 employed as a full-time maintenance planner/scheduler/technician from February 22, 2011 through November 11, 2013. He was discharged from employment due to violation of the employer's attendance policy with a final incident on November 11, 2013 when he was four hours late for work. The claimant was scheduled to report to work at 3:00 a.m. on November 11, 2013 but failed to call or report to work until 7:00 a.m. He denied knowing he was supposed to work at 3:00 a.m. and thought he was supposed to work at 7:00 a.m. The schedule for November 11, 2013 was posted on November 6, 2013 at 11:28 a.m. The schedule must be posted the Wednesday before the scheduled week pursuant to an agreement with the union.

Employees are terminated if they have more than eight points or occurrences within a rolling twelve-month period. The claimant was last warned about his attendance on November 4, 2013, when he had six and a half occurrences. He knew his job was in jeopardy and received one point on November 11, 2013 for failing to call the employer prior to his shift and one point for being late longer than 59 minutes. The claimant was discharged with eight and a half points.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on November 11, 2013 for 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. 871 IAC 24.32(7).

The Iowa Supreme Court in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. The Court in the case of *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984) held that absences due to matters of "personal responsibility such as transportation problems and oversleeping are considered to be unexcused."

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 schedule for November 11, 2013 had been posted since 11:28 a.m. on November 6, 2013 and the claimant should have known he was scheduled at 3:00 a.m. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The unemployment insurance decision dated December 10, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css