

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CALEB K GRIMM

Claimant

APPEAL 18A-UI-04181-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SELECT GENETICS LLC

Employer

OC: 02/25/18

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 27, 2018, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2018. Claimant participated. Employer participated through human resource administrator Kim Carson.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a mechanic from September 15, 2017, and was separated from employment on February 26, 2018, when he discharged.

The employer has a written attendance policy that requires employees to be at work on time and work their set schedule. The employer requires employees contact the employer and report their absences prior to the start of their shift. Claimant was aware of the employer's policy.

The final incident occurred when claimant was tardy on February 21, 2018. On February 21, 2018, claimant was scheduled to start work at 7:00 a.m., but he did not arrive until 7:43 a.m. Claimant testified he thought he was to start work at 7:00 a.m., but he did not arrive until 7:43 a.m. because he had lost track of time. On February 26, 2018, the employer made the decision to discharge claimant due to his absenteeism, attitude, and behavior.

On January 18, 2018, the employer gave claimant a written warning and three day unpaid suspension due to his poor communication, poor professionalism, and absenteeism. On January 23, 2018, the employer placed claimant on a written thirty day performance improvement plan due to his absenteeism, attitude, and job performance. Claimant was warned that his job was in jeopardy. When claimant was given the performance improvement plan, the employer informed him that his hours were 7:00 a.m. to 5:00 p.m., Monday through Friday. Since the employer placed claimant on a performance improvement plan on January 23, 2018,

he was absent, tardy, or left early on: January 23, 2018 (left early); January 24, 2018 (left early); January 25, 2018 (left early); January 26, 2018 (tardy and left early); February 5, 2018 (tardy); February 7, 2018 (left early); February 8, 2018 (tardy and left early); February 9, 2018 (tardy and left early); February 12, 2018 (left early); February 13, 2018 (absent due to illness); February 14, 2018 (left early); February 15, 2018 (tardy and left early); February 19, 2018 (left early); February 20, 2018 (tardy and left early); and February 21, 2018 (tardy). Claimant testified when he was tardy, it was because he was trying to get back on a schedule after having a baby on January 30, 2018. Claimant would leave early when he was done with his work. The employer required claimant to notify his supervisor when he was done with his work and then his supervisor would find other work for him to perform.

When claimant first started, his schedule was 7:30 a.m. to 4:30 a.m. Claimant's first supervisor (Craig) told him that when he got his work done he could leave. Craig's last day as claimant's supervisor was January 3, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 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).

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa

1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982). Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Two absences would be the minimum amount in order to determine whether these repeated acts were excessive. Further, in the cases of absenteeism it is the law, not the employer's attendance policies, which determines whether absences are excused or unexcused. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 557-58 (Iowa Ct. App. 2007).

An employer's absenteeism policy is not dispositive of the issue of qualification for benefits; however, 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. On January 23, 2018, the employer clearly informed claimant that his work schedule was from 7:00 a.m. until 5:00 p.m. On February 21, 2018, claimant was tardy to work for personal reasons, which is considered unexcused. Since the employer put claimant on a thirty day performance improvement plan, claimant was tardy on seven occasions and left early on twelve occasions, which is considered excessive.

The employer has established that claimant was warned on January 23, 2018 that further unexcused absences could result in termination of employment and his final tardy on February 21, 2018 was not excused. Claimant's final absence, in combination with his history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The March 27, 2018, (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs