

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES D BISSETT

Claimant

APPEAL NO. 14A-UI-02207-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 11/17/13

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the February 20, 2014, (reference 03) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on April 7, 2014. Claimant did not participate. Employer did participate through Wendy Messenbrink, Customer Service Manager.

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: Claimant was employed beginning on December 12, 2012. He worked intermittently and then stopped working for this employer as he began working for another employer. He returned to work for this employer in early January 2014. He was first assigned to work at Berry Plastics, through January 16, 2014 when he was discharged from the assignment due to poor attendance. He was told that his failure to show up for work and his failure to be on time for work was placing his job in jeopardy.

He was next assigned to work at Wells Fargo Arena on January 30, 2014. When the employer assigned him to work at Wells Fargo they again went over the attendance policy and procedure and the claimant was specifically told that he was being given one more chance and that his failure to improve his attendance would lead to his discharge. He was fifteen minutes late for his first day of work because he could not find parking. He called in absent to work on February 4 due to weather. The event he was to work at was not cancelled and none of his coworkers missed work due to the weather. He called in absent on February 6, 2014 as he could not find parking again. He did not report on February 7, as his uncle was in the hospital. He did not report for work at noon on February 13, because he thought his start time was at 2:00 p.m. It was the claimant's responsibility to know when he started work. Wells Fargo told

the employer they did not want him assigned to work for them any longer due to his poor attendance. Because this was the claimant's second lost assignment, he was discharged due to poor attendance. The claimant had been given ample warnings that his failure to report to work and to report on time was placing his job in jeopardy.

While the claimant was awarded benefits by the fact-finding representative, he has not collected any unemployment benefits as his claim is locked for other reasons. Thus, the issue of overpayment and whether the employer's account is subject to charge is moot.

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 20, 2014, (reference 03) decision is reversed. 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. Inasmuch as no benefits were paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs