

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E WOLFF

Claimant

APPEAL NO. 10A-UI-06049-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACKHAWK ENGINEERING INC

Employer

OC: 07/12/10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 5, 2010 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 8, 2010. Claimant participated. Employer participated through Jason Anders and LaNae Nielsen. Claimant's Exhibit A was admitted to the record. The administrative law judge took judicial notice of the administrative record.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a materials handler and was separated from employment on March 8, 2010. On February 24, 2010 after recovering from a disputed work injury he was released to full duty work. At hearing he denied receipt of the work status report (Administrative Record, Exhibit 3) from company physician Charles Mooney, M.D. releasing him to return to work on February 24, 2010 even though the box was checked indicating a copy was given to claimant. He acknowledged being instructed to set up a follow-up appointment but never did do. He failed to return to work on February 25, 26 and March 1, 2010. On March 3 employer found out about the release so contacted claimant and told him to return to work to discuss the matter with Nelson and Anders on March 8. Claimant laughed and said it would not make a difference to the separation, thought he was still injured, and wanted to see another doctor. Although claimant saw his family doctor Marilyn Lief, M.D. a few days later he provided no information to the employer about that appointment. Dr. Lief did not tell him specifically if he could or could not work, nor gave him any restrictions.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Although claimant argues that he did not receive the work status report or instruction to return to work, that testimony is not credible as he acknowledged knowing he was to set up a follow-up appointment and the box on the form was checked indicating claimant was provided a copy. Furthermore, his response to employer's attempt to preserve the employment relationship by laughing at the suggestion they meet to discuss the matter, and his statement that he wanted to see another doctor indicates he knew enough of what was in the work release from Dr. Mooney to disagree with it. The claimant's failure to return to work upon his medical release without restrictions resulted in excessive unexcused absenteeism and his refusal to meet with employer about the issue was insubordination and rose to the level of disqualifying misconduct. Benefits are withheld.

DECISION:

The April 5, 2010 (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