

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUAD COVIC**  
Claimant

**APPEAL NO. 13A-UI-12114-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 09/29/13**  
**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 an appeal from the October 22, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on November 20, 2013. Claimant participated. Employer did participate through Mike Repp, Staffing Consultant.

**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 last assigned to work at Con-Trol Container Management full time as a fork lift driver beginning January 20, 2013 through October 2, 2013, he was discharged. The claimant was given a copy of the employer's attendance policy when hired and when it changed. The claimant was given a written warning on August 26, 2013, that put him on notice that his poor attendance was placing his job in jeopardy. Employees are given a written warning when they have 56 hours of unexcused absences. When the claimant achieved 64 hours of unexcused absences he was suspended for three days from September 17, through September 19. On September 29, 2013 the claimant was two hours and twenty-two minutes late for work because his alarm did not go off and he overslept. The employer took three days to make the decision about discharge because Mr. Repp wanted to do all he could to save the claimant's job. Mr. Repp had previously excused absences for the claimant that other employees would not have been entitled to. The claimant had fair warning that his own poor attendance was placing his job in jeopardy.

**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 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 22, 2013, (reference 01) 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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