

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 04A-UI-08579-H2T
OC: 07-11-04 R: 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 30, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 30, 2004. The claimant did participate. The employer did participate through (representative) Bill Hughes, Team Leader; Judy Ferch, Scheduling and Staff Coordinator; and Pat Larsen, Team Administrator. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a personal assistant full time beginning December 8, 1998 through

June 9, 2004 when he was discharged. The claimant was discharged from employment due to a final incident of absenteeism that occurred on June 4, 2004 when the claimant was a no-call/no-show. The claimant tried to call the employer collect and could not get through on any of the employer's phone lines because the lines would not accept a collect call. The claimant was arrested on June 4, 2004 and incarcerated and unable to come in to work. The claimant tried to call in to work but was unable to reach the employer because the employer's phone number does not accept collect calls. The claimant was next scheduled to work on June 8, 2004. When he reported to work that day, he was given the correct number to call in when he needed to call collect. The claimant was allowed to work the entire day on June 8, 2004. The claimant did not receive a final warning prior to his discharge that warned him he faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on December 3, 2003 and May 30, 2003.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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). The claimant was entitled to fair warning that the employer was no longer going to tolerate his poor attendance at work. The claimant's last warning did not warn him that his next absence would result in his discharge. Without fair warning the claimant had no way of knowing that there were changes he needed to make in order to preserve his employment. As such, misconduct has not been established and benefits are allowed.

DECISION:

The July 30, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/b