

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL R ANDERSON**  
Claimant

**APPEAL NO. 12A-UI-03552-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIDGESTONE AMERICAS TIRE**  
Employer

**OC: 02-19-12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 27, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 23, 2012. The claimant did participate. The employer did participate through Jim Funcheon, division human resources manager; Jeff Higgins, labor relations manager; and Jared Lofland, area business 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: The claimant was employed as a trimmer on the production line, full-time, beginning May 5, 2004, through February 9, 2012, when he was discharged. The claimant arrived to work on January 19, 2012 and had been off work on for eight days prior due to illness. Under the employer's policy, employees who are off for an extended period of time due to illness must "clear medical" before being allowed to return to work. The claimant's physician had him off work and certified that he was unable to work through January 18, 2012. The employer requires that employees come to work on their own time to obtain medical clearance prior to being allowed back to work. The claimant's work shift started at 6:00 a.m. on January 19. The company doctor, who is the only one who can provide medical clearance, does not arrive at work until around 6:30 a.m. The employer discharged the claimant because he did not come in on his own time the day before to see the doctor to obtain medical clearance to return to work. Since the claimant was excused from work by his physician the day before (January 18), he was placed in an impossible position. There was no way he could comply with the employer's policy, since he was excused from work due to illness on January 18, 2012, and there was no way he could come to work early enough on January 19, since the company physician started work after he did. The claimant did arrive at work on time on January 19, but had to wait to start work until the company physician arrived and cleared him to return to work.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not 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). **Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional.** *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is **not** dispositive of the issue of qualification for benefits. While an employer may establish any attendance policy they so chose, that policy does not decide whether a claimant is eligible for unemployment insurance benefits. Since the employer requires that an employee, on their own time, get medical clearance after being gone for an extended illness, the employer has to insure that it is physically possible for the employee to comply with their policy. In this case, it was physically impossible for the claimant to comply with the employer's policy. The claimant's physician excused him from work due to illness on January 18. The claimant was too ill to work that day; thus, it is reasonable that he was too ill to present himself to the company physician to obtain medical clearance to return to work. Since the claimant's start time was prior to the company physician arriving at work, it was physically impossible for the claimant, under these circumstances, to comply with the employer's policy that he obtain medical clearance on his own time before returning to work. Under these circumstances, the administrative law judge finds the claimant's tardiness in reporting for work on January 19 was due solely to the untenable position he found himself in. He was at the plant on time, but there was no doctor there to medically clear him. His tardiness is not an unexcused absence; thus, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The March 27, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw