

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICHARD L HASS
Claimant

FISHER CONTROLS INTERNATIONAL LLC
Employer

APPEAL 15A-UI-07299-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/15
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 June 17, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 17, 2015. Claimant did participate. Employer participated through Tammy DeJong, Labor Relations Manager. Employer's Exhibit One was entered and received into the record.

ISSUES:

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 full time as a serial plate stamper beginning on August 16, 2004 through June 3, 2015 when he was discharged. On May 26, the claimant was given his final warning indicating that he was at eight attendance points. He was warned at that time that if he reached nine points he would be discharged. The claimant was arrested on May 30 and placed in the Tama County jail. He was not released from jail until June 3. On June 1 and June 2, he called the employer and reported he could not come to work because he was ill. He may have been ill, but he could not report to work because he was incarcerated. The claimant was discharged on June 3 when he was released from jail and reported back to the employer.

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.

Iowa Admin. Code r. 871-24.32(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's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

The claimant was not a credible witness as he lied to his employer by not telling them he was in the Tama county jail on June 1 and June 2. His absences were due to his incarceration. They are not excused for the purposes of unemployment insurance benefits.

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 June 17, 2015 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css