

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN R BAUER**  
Claimant

**APPEAL NO. 08A-UI-11363-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROCKWELL COLLINS INC**  
Employer

**OC: 10-26-08 R: 03  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 1, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 17, 2008. The claimant did participate. The employer did not participate.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a maintenance mechanic full time beginning June 5, 1989 through July 7, 2008 when he was discharged.

The claimant checked the overtime schedule for the weekend of June 28 and June 29 on Tuesday June 24. When he checked the schedule on Tuesday June 24 he was not listed as having to work overtime on Sunday. The claimant was listed for overtime on Saturday and he did report for and work that shift.

While the overtime schedule was usually posted on Tuesday for the following weekend, often changes were made without notification to employees after the initial posting. The employer does not follow any set procedure for posting the overtime schedule. When the claimant missed his overtime scheduled on June 29, he was subsequently discharged on July 8.

The claimant was working on an amended last chance agreement that required in part that he not miss any work shifts, or that if he did have to miss work that he properly notify the employer of his absence. The claimant was discharged for violating his amended last chance agreement.

**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 § 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 did not know that he was scheduled to work overtime on Sunday June 29. When the schedule was posted on Tuesday June 24 he was not listed on the schedule. Sometime thereafter the overtime schedule was changed and the claimant was not notified of the change. The claimant did not know he was scheduled to work, thus, the administrative law judge cannot conclude that his absence was volitional. The employer did not establish that the claimant failed to follow any required procedure for checking the overtime schedule or that the schedule that was posted on Tuesday, when the claimant checked it, required the claimant to appear for work on Sunday. No last unexcused absence has been established, thus, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The December 1, 2008, reference 01, decision is reversed. 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/pjs