

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ALEX R SARCENO BARRIOS**  
Claimant

**EXEL INC**  
Employer

**APPEAL 14A-UI-02033-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/02/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 21, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 17, 2014. Claimant participated through interpreter Ike Rocha. Employer participated through general manager Brian Smith, operations supervisor Jeff Fegter, and human resource manager Maria Valles. Employer's Exhibits 1 through 4 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job related 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 fork lift operator from October 11, 2012, and was separated from employment on February 5, 2014. His last absence was on February 4, when he was absent for his scheduled shift because of a single car accident after sliding into a ditch during a snow storm. (Employer's Exhibit 4) The plant is in Osceola, Iowa, about 40 miles south of Des Moines where claimant lives. The employer has a no-fault attendance policy that treats all absences the same, regardless of reason. He left early on June 30, with notice to Fegter, because his father was hospitalized. (Employer's Exhibit 1) On October 12, 2013, he called in absent because of his six-year-old child's illness. No other care was available as he and the child's mother are separated. (Employer's Exhibit 2) On January 22, 2014, he left early knowing he would incur a half point because his car was not working and he wanted to see if he could fix it before the hour drive home. (Employer's Exhibit 3) Claimant speaks and understands a moderate amount of English but does not read or write it. Valles held a meeting in January 2014, with all associates to explain the attendance policy in both English and Spanish. None of the policies or corrective action notices are written in Spanish. The corrective action notices were not explained to him in Spanish in spite of Valles being bilingual.

## 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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. A failure to report to work because of transportation issues is generally considered an unexcused absence. However, one incident of an accident due to a snow storm is not considered an unexcused absence because it was not volitional. Because all but one other absence was otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

**DECISION:**

The February 21, 2014, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld based upon this separation shall be paid to claimant, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs