

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES RYTHER**  
Claimant

**APPEAL NO: 12A-UI-12183-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DONALDSON COMPANY INC**  
Employer

**OC: 09-09-12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 1, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 5, 2012. The claimant participated in the hearing. Kelly Geurreo, human resources supervisor, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-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 full-time combination welder for Donaldson Company from August 23, 2011 to September 12, 2012. He was discharged for excessive unexcused absenteeism. On March 14, 2012, the claimant received a note to his file after he was absent September 7, 2011; tardy September 10, 2011; October 5, 2011; October 17, 2011; October 25, 2011; October 27, 2011; November 16, 2011; December 17, 2011; absent January 16, 2012; February 28, 2012, March 1, 2012; and was a no-call no-show March 12, 2012. He received a verbal warning April 30, 2012, after he was absent April 20, 2012, and a no-call, no-show April 27, 2012. He received a written warning July 6, 2012, after he was absent May 23, 2012; tardy May 30, 2012; and absent July 2, 2012. The claimant received a written warning and three day suspension August 3, 2012, after he was absent with a doctor's excuse July 11, 2012; absent July 16, 2012, absent 3.8 hours July 17, 2012; absent 5.5 hours July 18, 2012; and absent August 2, 2012. The claimant, the union representative, and the employer met August 3, 2012, in order for the claimant to provide any information he thought might be helpful to his case and prevent the suspension. The claimant indicated he had a doctor's excuse August 2, 2012, and the employer allowed him to go home around 9:00 a.m. to retrieve his note. The claimant contacted the employer after the end of his scheduled shift at 3:00 p.m. and provided a note from his doctor stating he was seen on August 3, 2012, and excused from work August 2 and August 3, 2012. The union decided not to pursue a grievance regarding the

claimant's suspension, because he led the employer to believe he was seen by a physician August 2, 2012, but did not actually go to his doctor until August 3, 2012. The claimant returned from suspension August 8, 2012, and was absent August 15, 2012. Around August 22, 2012, the claimant informed the employer he was going to court September 5, 2012, and would most likely have to serve jail time. He did not call or show up for work September 5 through 12, 2012, and the employer terminated his employment September 12, 2012, for excessive unexcused absenteeism.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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). The claimant accumulated 19 absences, 8 incidents of tardiness, and 2 partial days worked between September 7, 2011 and September 12, 2012. He presented three doctor's excuses for his absences, but the last absence was due to incarceration and was not related to properly reported illness. Whether reported to the employer prior to occurrence or not, absences due to incarceration are not considered excused absences. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and that the final six absences, due to the claimant being in jail, were not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

**DECISION:**

The October 1, 2012, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw