

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TARRANCE M ROBERTS**  
Claimant

**APPEAL NO: 18A-UI-12465-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT HEINZ FOODS COMPANY**  
Employer

**OC: 12/09/18**  
**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 December 27, 2018, 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 January 15, 2019. The claimant participated in the hearing. Sharon Bull, Human Resources Generalist, 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 production team member for Kraft Heinz Foods Company from February 20, 2018 to December 11, 2018. He was discharged from employment due to a final incident of absenteeism that occurred on December 10, 2018.

The employer uses a point-based no-fault attendance policy and employees are terminated upon reaching 14 points in a rolling 12 month year. If an employee calls prior to his shift and reports he will not be in, he receives one point; If he calls after the start of his shift he receives one and one-half points; if he calls prior to his shift and reports he will be late he receives one-half point; and if he is a no-call/no-show he receives three points. Two consecutive no-call/no-show absences result in termination. The employer issues employees a final written warning when they reach 12 attendance points. If an employee has 90 days with perfect attendance a point drops off.

The employer offers personal and medical leaves of absence for employees who do not qualify for FMLA. The medical leave of absence requires documentation from a physician and the employer prefers the employee make the request early in his absence rather than waiting several days.

The claimant worked 7:00 a.m. to 3:30 p.m. Thursday through Monday with Tuesday and Wednesday off work. He was absent April 23, May 8, May 12, May 21, July 10, August 11, August 13, October 26, November 11, November 18, and November 29 through December 6, 2018. On December 6, 2018, the claimant's manager sent human resources a message indicating the claimant was missing a great deal of work and human resources sent an updated script to be read to the claimant when he called the call center to report he would be absent. The message stated human resources wanted to meet with him December 11, 2018, but he should still report to work until the meeting. The claimant got the message when he called in December 8, 2018. The claimant was a no-call/no-show December 9 and December 10, 2018. He did show up for the meeting on December 11, 2018, with human resources and a union steward. The claimant did not offer a doctor's excuse or why he accumulated a large number of absences. At the conclusion of the meeting, the employer terminated the claimant's employment for accumulating 17 points and the two consecutive no-call/no-show absences December 9 and December 10, 2018, which resulted in six additional points for a total of 23 points.

The claimant testified his one year old daughter became ill November 24, 2018, in Chicago and he spent some time with her there. When he returned, he was sick for two days. He did not secure medical documentation from his daughter's physician in Chicago and did not see his own doctor for his illness. He did not inquire with the employer about a personal or medical leave of absence when he realized he would be absent several days. The claimant stated when he called in to report his absence December 8, 2018, he assumed the employer did not want him back to work until the meeting December 11, 2018, but acknowledges the recording stated he was still to report for work until the meeting.

The claimant accumulated his twelfth point November 30, 2018, but did not return to work and consequently did not receive his final written warning. After being told to return to work the two days before the meeting December 8 and 9, 2018, the claimant was a no-call/no-show which ultimately resulted in his termination from employment.

#### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The claimant called in seven days between November 29 and December 8, 2018, but does not know what portion of that time was spent in Chicago with his daughter, or at home dealing with his own two day illness, or when he was at home and not caring for his daughter or his own illness. He knew the employer expected him at work December 9, 2018 and December 10, 2018, but failed to call in or come in to work on those dates.

The employer has established that the claimant was familiar with the employer’s attendance policy and accumulated 23 attendance points in violation of the policy between April 23 and December 10, 2018. He did not receive a written warning during the final absence because he did not return to work between November 29 and December 6, 2018. The final no-call/no-show absences, in combination with the claimant’s history of absenteeism, are considered excessive. Therefore, benefits must be denied.

**DECISION:**

The December 27, 2018, 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/scn