

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEMARCUS M TURNER**  
Claimant

**JENSEN BUILDERS LTD**  
Employer

**APPEAL 15A-UI-10537-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/04/15**  
**Claimant: Appellant (1)**

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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 September 17, 2015, (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 October 1, 2015. Claimant participated. Employer participated through human resource director Tom Nelson. Employer's Exhibits 1 through 3 were received. Claimant's Exhibits A through C 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 an iron worker and was separated from employment on August 26, 2015, when he was discharged. He missed work on August 24 due to reported car trouble on the way back from Florida. On Wednesday, August 26, he was scheduled to work at 4:30 a.m. but reported at 6:00 a.m. saying he had overslept after having worked long hours and getting home about 7:30 p.m. the day before. General superintendent Nate Gellis had warned him verbally on January 20, 2015, for a no-call/no-show absence on January 19 related to car troubles. (Employer's Exhibit 3) He had been warned in writing on March 24, 2015, about no-call/no-show absences on March 21 and 23. (Employer's Exhibit 1) A final written warning was issued on July 7, 2015, for that day and the week of June 29 related to improperly reported absences. (Employer's Exhibit 2) The employer did not count absences against him when he provided medical excuses for his or his family members' illnesses when properly reported. (Claimant's Exhibits A through C)

**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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, 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 improperly reported or unexcused absences could result in termination of employment and the final absence (tardiness) was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The September 17, 2015, (reference 01) unemployment insurance decision is affirmed. 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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