IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-02377-H2T
OC: 12-25-05   R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY
1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

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 February 23, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on March 30, 2006. The claimant did participate along with Karin Smith, the claimant's wife, and was represented by William Niebel, Attorney at Law. The employer did participate through Cyd Hall, Office Manager. Claimant's Exhibit A was received. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Rudy Salem and assigned at All Power as a janitor part time

beginning January 18, 2006 through January 18, 2006 when he was discharged. The claimant only worked on January 18, 2006 for seven hours. He called Rudy Salem on January 19, 2006 and left a message indicating that he was having back pain and would not be in to work on January 19. The employer did not hear from the claimant on January 20, 2006. He was considered a no-call/no-show for that day. He next contacted Rudy Salem on January 23, leaving a message on the voice mail indicating that he was able to and available for work. He did not hear from Rudy Salem. He called Rudy Salem on January 24 and left a message again saying he was able to and available for work. He did not hear anything from anyone at Rudy Salem. He again called Rudy Salem on January 27 at around 6:00 a.m. and left a message indicating that he was able to and available for work. He did not hear from anyone at Rudy Salem. He next called on January 31 and again left a phone message indicating he was able to and available for work. He never heard from anyone at Rudy Salem after leaving messages beginning on January 19. The employer considers the claimant to have quit because he was a no-call/no-show on January 20, 2006.

The claimant did not intend to quit his job when he called in and indicated that he could not come to work because his back hurt. The claimant clearly indicated that he wanted to work on January 23.

The claimant was discharged from employment due to an incident of absenteeism that occurred on January 20, 2006. The claimant was never warned that he faced termination from employment upon another incident of unexcused absenteeism.

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 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).

A failure to report to work without notification to the employer is considered an unexcused absence. One unexcused absence without prior warning or a history of other absences is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The February 23, 2006, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/s