

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES LOHOFF
Claimant

APPEAL NO: 15A-UI-00339-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS CORP
Employer

**OC: 12/21/14
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 January 12, 2015, 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 February 2, 2015. The claimant participated in the hearing. Christina Johnson, Human Resources Assistant, 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 rotary file employee for Wellman Dynamics from May 24, 2013 to December 22, 2014. He was discharged from employment due to a final incident of absenteeism that occurred on December 20, 2014.

The employer's attendance policy allows employees eight absences in a rolling calendar year before they receive their first active written warning; nine absences in a rolling calendar year before they receive their second active written warning; ten absences in a rolling calendar year before they receive their third active written warning; and eleven absences in a rolling calendar year before termination occurs. An absence falls off after one year. The first written warning is active for nine months and if an employee accumulates a second and third written warning they drop off after 18 months. Employees must call the employer at least 30 minutes prior to their shift. If they do not do so, it is considered a violation of a plant rule rather than an attendance violation.

The claimant was absent due to properly reported illness February 18 and 19, 2014; he was absent due to new medications that were making him drowsy May 14, 2014; he was absent due to properly reported illness June 18, 2014; he was absent due to personal reasons June 20 and June 25, 2014; he was absent on a mandatory Saturday without providing a reason June 27,

2014; he was absent due to personal reasons June 29 and July 3, 2014; he was absent due to properly reported illness July 8, 2014; her was absent due to personal reasons July 11, July 17 and July 28, 2014; he was absent without providing a reason August 18, 2014; he was absent on a mandatory Saturday due to properly reported illness August 23, 2014; he was absent without providing a reason September 11, 2014; and he was absent a partial day without providing a reason September 27, 2014.

The claimant was tardy December 20, 2014, when he was scheduled for mandatory Saturday overtime because he stopped for gas at Casey's 15 to 20 minutes prior to the start of his shift and then his truck would not start again. He thought the battery must have died and asked someone to jump start it but when that did not work he realized it was the starter. He had to find a way home and a way to get his truck home because he could not leave it at Casey's. He had already missed the 30 minute time frame to call in to report he would be late and arrived at work about 30 to 45 minutes late. That absence placed him over the limit and his employment was subsequently terminated December 22, 2014.

The claimant received a first written warning August 23, 2014, for accumulating eight absences; a second written warning September 11, 2014, for accumulating nine absences; a third written warning September 27, 2014, for accumulating 10 absences; and a written warning December 20, 2014, for accumulating 11 absences.

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 § 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 Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Of the claimant's 18 absences between February 18 and December 20, 2014, six were related to properly reported illness and 12 were related to personal reasons or no reason provided. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence, while unfortunate, was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The January 12, 2015, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs