

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES A STURGILL**  
Claimant

**SHAW ELECTRIC INC**  
Employer

**APPEAL 16A-UI-11572-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/02/16**  
**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 October 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on November 8, 2016. The claimant, James Sturgill, participated. The employer, Shaw Electric, Inc., participated through Sheri Zaehring, HR manager. Claimant's Exhibits A through N and Employer's Exhibit 1 through 9 was received and admitted into the record.

**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, most recently as an apprentice electrician, from January 27, 2016, until September 23, 2016, claimant was discharged.

Claimant last reported to work on July 5, 2016. He ceased reporting to work after that date because a non-work-related medical condition. According to claimant's short-term disability claim, Dr. Emily Gutz anticipated he would be released to return to work on July 15, 2016. (Exhibit 2) The employer's short-term disability insurance carrier paid claimant disability benefits for two days. (Exhibit 4) On or about August 11, 2016, the employer received a letter from Dr. Gutz regarding claimant's physical condition. (Exhibit 5) In the letter, Dr. Gutz states she has ordered further imaging studies of claimant's neck and writes, "At this time, I cannot clear patient from days missed of work." After Zaehring received this note, she reached out to claimant's field manager to see if he had heard anything from claimant regarding his health status and anticipated return-to-work date. Neither Zaehring nor the field manager had any contact with claimant around that time.

Sometime prior to September 19, 2016, Zaehring got notice to claimant about a mandatory meeting that was scheduled for September 19 at 11:00 a.m. Claimant emailed Zaehring the morning of the meeting to notify her that he would not be attending due to a medical appointment. (Exhibit 6) Zaehring responded that the employer considered claimant to be on leave without a valid medical excuse. She informed claimant that he needed to submit a doctor's note by September 23 in order to remain employed. Claimant never submitted any updated medical note to the employer. Therefore, on September 23, Freeman discharged claimant. (Exhibit 7) Claimant testified he did not receive Zaehring's email until the day before the employer's deadline for submitting his documentation

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law.

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191,

or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper* at 10. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings.

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. Here, the employer contacted claimant and notified him that he needed to provide medical documentation excusing his absences. Claimant failed to provide any such documentation. The last document the employer received from Dr. Gutz indicated claimant had no medical excuse for failing to report to work. Claimant’s failure to check his email promptly and read the employer’s request for additional medical documentation is not a reason for failing to comply with the employer’s request. As claimant told the employer he could not make the mandatory meeting because of a medical appointment, the employer was reasonable in believing claimant would have ready access to a doctor to provide the requested documentation. Claimant’s absences between mid-July and September 23 are excessive. None of these absences were excused by medical documentation. In fact, claimant provided documentation expressly \*not\* excusing the absences. The employer has established that claimant was discharged due to excessive, unexcused absenteeism. Benefits are withheld.

**DECISION:**

The October 18, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. 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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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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