

**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**

**DARRELL SMITH
1732 ST LOUIS AVE
EAST ST LOUIS IL 62205**

**PAULO PRODUCTS CO
5620 W PARK AVE
ST LOUIS MO 63110**

**Appeal Number: 06A-UI-01399-H2T
OC: 12-18-05 R: 12
Claimant: Appellant (1)**

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 January 31, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 22, 2006. The claimant did participate. The employer did participate through Melissa Narez, production payroll specialist. 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 as a general shop employee full time beginning April 25, 2005 through November 15, 2005 when he was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred from November 7 through November 11 and November 14, and 15. The claimant did not call the employer or report to work because he was incarcerated and unable to report to work. The claimant was incarcerated for six weeks. The claimant was released from jail on December 19, 2005. The claimant was last warned on November 4, 2005, that he faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on June 2, June 3, July 9, and October 28. The claimant was tardy to work on May 23, June 15, July 1, July 6 and August 8.

The claimant was given a copy of the employer handbook on April 25, 2005 which includes their three day no call-no show policy. The claimant failed to report for work or notify the employer of his absences for three consecutive scheduled workdays beginning November 7, 2005 in violation of the employer's policy.

The claimant's girlfriend called on November 15 to tell the employer that he had been arrested and would not be in to work. By the time she called the claimant had already been a no call-no show for three consecutive work days.

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 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).

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final

absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

The claimant's absence due to incarceration is not good cause to be absent.

871 IAC 24.25(4)(16) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant's failure to report to work due to incarceration is not good cause attributable to the employer. Benefits are withheld.

DECISION:

The January 31, 2006, 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.

tkh/s