

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ROBERT D JONES**  
Claimant

**APPEAL NO. 19A-UI-00144-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROBUILD COMPANY LLC**  
Employer

**OC: 12/02/18**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Robert Jones (claimant) appealed a representative's January 2, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with ProBuild Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 23, 2019. The claimant participated personally. The employer participated by Kris Falder, Human Resources Manager, and Rich Goodwin, General Manager of Davenport Facility. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 6, 2017, as a full-time load builder. He worked from 7:00 a.m. to 3:30 p.m. The claimant digitally signed for receipt of the employer's handbook on September 12, 2017.

The claimant was repeatedly late for work due to oversleeping, losing his keys, and other reasons. On October 9, 2018, the general manager of the Davenport, Iowa, facility and the yard operations supervisor met with the claimant to discuss his attendance and performance issues. The employer told the claimant he would be terminated if he continued to have attendance problems.

After October 9, 2018, the claimant was tardy sixteen times. He played football and did not go to bed until 1:00 a.m. On the morning of December 5, 2018, the employer contacted the claimant twice about coming to work. Each time the claimant said he overslept. He arrived at work more than an hour late. The employer terminated the claimant on December 5, 2018, for excessive tardiness.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

The claimant's and the employer's testimony was not the same. The administrative law judge finds the employer's testimony to be more credible because two eye witnesses agreed on the events that occurred. The claimant's testimony was internally inconsistent.

**DECISION:**

The representative's January 2, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs