

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD DICKENS**  
Claimant

**APPEAL NO. 11A-UI-03446-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPIRE FOUNDRY PRODUCTION  
& RECLAIM INC**  
Employer

**OC: 02-06-11**  
**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 March 15, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 14, 2011. The claimant participated in the hearing with Paralegal Hattie Holmes. Jeremy Brown, owner, 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 general laborer for Empire Foundry Production & Reclaim from October 31, 2008 to February 4, 2011. He was discharged from employment for exceeding the allowed number of attendance points. The employer's attendance policy assesses one-half point for each incident of tardiness or leaving early and a full point for any unexcused absence, which are those unaccompanied by a doctor's excuse. Excused absences result in one-half point. When an employee accumulates 15 attendance points, his employment is terminated. The claimant left early and received one-half point for each occurrence May 14, May 25, July 23, September 17, September 22, October 22, October 27, and December 9, 2010, and January 20, 2011, for a total of four and one-half points. He was tardy July 9, August 12, August 16, August 27 and September 2, 2010, for a total of two and one-half points. He had unexcused absences June 2, June 3, June 14, July 19, October 15, and December 4, 2010, for a total of six points. He had excused absences June 18, June 19, and December 28, 2010, and received one-half point for each for a total of one and one-half points. The claimant had 14.5 points as of February 3, 2011. He was in jail the evening of February 3, 2011, and consequently called in late and was tardy February 4, 2011, and his employment was terminated. The claimant received a verbal warning for each incident up to four and one-half points. He received a written warning July 12, 2010, when he reached five points, and a written

warning and three day working paid suspension October 20, 2010, after reaching 10.5 points. The claimant has a 15 year old son and a 16 year old daughter with ADHD and they are difficult for their mother to handle when they act up. Many of the claimant's absences were due to having to leave work to care for them. The claimant's daughter threw a bottle through their television set February 3, 2011, and when he restrained her so she could not harm herself, anyone, or anything else, she called the police and the claimant was arrested for domestic assault, which caused him to be tardy February 4, 2011.

### **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 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). Most of the claimant's absences were due to personal issues involving his family. While the claimant had good personal reasons for most of his absences and was trying to be a good father, the fact that his children acted out on a fairly consistent basis does not equal a good-cause reason for his absences and the employer cannot be expected to repeatedly accommodate his personal situation, regardless of how compelling that situation might be. 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. Consequently, the administrative law judge must conclude the claimant's absences constitute disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be denied.

**DECISION:**

The March 15, 2011, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw