

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL PARSONS
Claimant

APPEAL NO: 12A-UI-01562-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACADEMY ROOFING & SHEET METAL CO
Employer

OC: 01-08-12
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 February 7, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on March 26, 2012. The claimant participated in the hearing. Brian Krumm, President; Diane Parker, Director of Human Resources; Dale Miller, Superintendent; and Dave Berns, Service Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two and Claimant's Exhibits A through D were admitted into evidence.

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 roofer for Academy Roofing & Sheet Metal Company from May 31, 2011 to December 12, 2011. He was discharged from employment due to a final incident of absenteeism that occurred on December 8, 2011. The claimant suffers from chronic pancreatitis which causes him severe pain and vomiting among other effects when he experiences episodes of that illness. The employer's attendance policy considers absences excused if the employee calls in prior to his shift and states he is ill and if he provides a doctor's excuse for absences due to illness which exceed two consecutive workdays. The employer considers an absence unexcused if the employee fails to call in or report for work. Three no-call no-show absences can result in termination of employment. The claimant was absent due to properly reported illness July 21, July 22, July 25 through July 29, August 3, October 17, November 14 and November 22, 2011. He was a no-call no-show October 18 through October 21, October 24, November 15 through November 18 and December 8, 2011. The claimant received multiple verbal warnings and a final written warning September 26, 2011, for failing to call or show up for work. He was aware his job was in jeopardy but stated sometimes he was in too much pain to call in to report his absences. He did speak to his mom every day but did not ask her to call the employer on his behalf. On December 7, 2011, the employer

found the claimant lying down with a heating pad while on the job because his pancreatitis was acting up. He did not seek permission before lying down. When he did not call or show up for work December 8, 2011, the employer decided to terminate his employment due to his 14 no-call no-show absences between September 19 and December 8, 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 § 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). While the claimant does have a chronic, painful illness, he had a cell phone next to him when he would lay on a heating pad because of the pain and it is difficult to believe he was unable to call in at any point or have his mom call the employer for him especially for the three, four and five days he was absent at a time. The employer was understanding and tried to accommodate his absences, including excusing those absences if he simply called in to report he would not be in to work, but it was difficult for the employer to work around his absences because he worked on a two-man crew. Although the administrative law judge is sympathetic to the claimant's illness, and could have overlooked a few no-call no-show absences because the claimant was too ill and in too much pain to call in, it is unreasonable for the claimant to expect the employer to accommodate fourteen no-call no-show absences in less than three months, when if he had simply called his absences in they would have been excused. 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. Therefore, benefits must be denied.

DECISION:

The February 7, 2012, 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