

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

WILLIAM K KLINK  
5640 – 410<sup>TH</sup> ST  
PRIMGHAR IA 51245-7547

OTTER CREEK ETHANOL LLC  
4970 – 260<sup>TH</sup> ST  
ASHTON IA 51232-7025

Appeal Number: 06A-UI-08135-LT  
OC: 07-02-06 R: 01  
Claimant: Appellant (2)

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 2, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 28, 2006. Claimant participated. Employer participated through Dean Van Reesen, David Axtell and Mike Steichen. The issue is whether claimant was discharged for reasons related to job misconduct. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time maintenance mechanic and boiler operator through June 28, 2006 when he was discharged for an alleged final incident of tardiness on June 28, 2006. His last

day of work was June 25. He was next scheduled to work at 6:45 a.m. on June 28, 2006. Employer claimed claimant arrived in the parking lot after 6:45 a.m. but did not allow him to clock in for verification and called him into the office where his employment was terminated involuntarily. Claimant arrived in the parking lot at 6:40 a.m. in time to clock in by 6:45 a.m. had he not been called to the office first. He also observed police waiting in the parking lot upon his arrival and following him out of the parking lot as he left after having been discharged, thus calling into question the actual reason for the separation.

He had a coaching session on June 14, 2006 about attendance but was not tardy or absent without excuse or permission thereafter as he was suspended June 28, reported his absence due to illness on June 24, and worked June 25. Employer did not offer timecards beyond June 9, 2006. (Employer's Exhibit 1)

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the

issue of qualification for benefits. While claimant did have a history of unexcused absenteeism related to tardiness, employer has failed to credibly establish, as is its burden of proof, that claimant was tardy on June 28 since it prevented him from clocking in. The other allegations of destruction of company property were not explored as employer insisted, more than once, that the final incident triggering the discharge was the alleged tardiness on June 28. Thus, employer has not established a final or current act of misconduct (absenteeism) and benefits are allowed.

**DECISION:**

The August 2, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/cs