

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CHAD A ANEWEER**  
Claimant

**GRAY TRANSPORTATION INC**  
Employer

**APPEAL 14A-UI-01909-L**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/19/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 10, 2014, (reference 01) decision that denied benefits because of a discharge from employment. After due notice was issued, a hearing was held on June 10, 2014, in Waterloo, Iowa. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through human resource manager Rita Lubbers. Employer's Exhibits 1 through 3 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time tire changer from August 23, 2012, through January 21, 2014. He was a no-call/no-show on that date and also on January 18, 2014. (Employer's Exhibit 1) Shop floor manager David Young told him verbally several times to report his absences directly to him rather than to coworkers and keep his work schedule from 7 a.m. to 4 p.m., every other Saturday. (Employer's Exhibit 2) CEO LeRoy Gray verbally warned him several times, most recently a couple of weeks before the separation, about reporting to work as scheduled, working whole work days, and reporting absences or the need to leave early to managers rather than coworkers. (Employer's Exhibit 3) Shop supervisor Zach Campbell and company president Darrin Gray also had authority to excuse his absences but were not contacted to do so.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related 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.

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 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 in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The February 10, 2014, (reference 01) decision is affirmed. 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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