

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELFATIN A SHEMEILA
Claimant

APPEAL NO. 08A-UI-10088-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 09/21/08 R: 01
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 15, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 14, 2008. Claimant participated through interpreter Naima Dzaferagic. Employer participated through Mike Lefevre.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a full-time production worker and worked from July 31, 2006 until September 17, 2008 when he was discharged. Claimant was absent on September 12 due to reported illness. He called employer's message system number and explained that he was still sick after having gone home early the day before due to illness. Employer had changed the reporting telephone number but claimant was not aware of the new number and did not receive the information on paper with his paycheck. Employer kept the old reporting phone system in operation because of problems with the new number. On September 15 and 16 he missed work because a friend was very ill after suffering brain damage and the friend's doctor asked claimant to stay with his friend. He did not call employer about his absence because it was an emergency and he forgot the phone numbers at home when he left. On September 17 he reported to work and explained why he had missed work and was fired. He had been warned on June 4, 2008 about attendance related to reported illness on May 30, 2008 and was warned about attendance on July 24, 2007 after he was absent due to reported illness.

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.

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. A failure to report to work without notification to the employer is generally considered an unexcused absence, however, the sole unexcused absence covering September 15 and 16 due to his friend's emergency medical condition is not disqualifying since it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The October 15, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs