

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SEAN TOUNEY**  
Claimant

**APPEAL NO: 07A-UI-04304-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL INCORPORATED**  
Employer

**OC: 03-11-07 R: 01  
Claimant: Respondent (2)**

Section 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 April 11, 2007, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 14, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Steve Smith, Plant Manager, 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 process technician for Cargill Incorporated from August 15, 2006 to November 8, 2006. He was discharged for excessive unexcused tardiness, substandard performance and overall attitude. On October 17, 2006, the claimant arrived at 8:45 a.m. for his 6:30 a.m. shift; on October 18, 2006, he arrived at 4:34 a.m. for his 4:30 a.m. shift; on October 19, 2006, he arrived at 4:35 a.m. for his 4:30 a.m. shift; on October 20, 2006, he arrived at 6:33 a.m. for his 6:30 a.m. shift; on October 23, 2006, he arrived at 4:34 a.m. for his 4:30 a.m. shift; on October 24, 2006, he arrived at 4:40 a.m. for his 4:30 a.m. shift; on October 25, 2006, he arrived at 4:37 a.m. for his 4:30 a.m. shift; on October 26, 2006, he arrived at 4:35 a.m. for his 4:30 a.m. shift; on October 27, 2006, he arrived at 4:34 a.m. for his 4:30 a.m. shift; on October 31, 2006, he arrived at 4:37 a.m. for his 4:30 a.m. shift; on November 1, 2006, he arrived at 4:36 a.m. for his 4:30 a.m. shift; on November 2, 2006, he arrived at 4:37 a.m. for his 4:30 a.m. shift; on November 3, 2006, he arrived at 4:35 a.m. for his 4:30 a.m. shift; on November 4 and November 6, 2006, he arrived at 4:36 a.m. for his 4:30 a.m. shift; and on November 7, 2006, he arrived at 6:55 a.m. for his 6:30 a.m. shift. The employer terminated his employment November 8, 2006. The claimant was warned about his attendance October 17, 2006. There is no evidence that these absences were related to illness.

The claimant has not received unemployment insurance benefits since his separation from this employer.

**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). The claimant was tardy 15 times between October 17 and November 8, 2006. 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. Benefits are denied.

**DECISION:**

The April 11, 2007, reference 02, decision is reversed. 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/pjs