

**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**

**SHANE P MIGAWA
131 N 5TH ST
CLINTON IA 52732**

**CUSTOM-PAK INC
86 – 16TH AVE N
CLINTON IA 52732**

**Appeal Number: 05A-UI-11817-LT
OC: 10-23-05 R: 04
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.

(Administrative Law Judge)

(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 November 15, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 7, 2005. Claimant did participate. Employer did participate through Vicky Rixen. 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 manufacturing team member for five and one-half years through October 26, 2005 when he was discharged. His final absence was on October 25, 2005 related a court appearance for a drug paraphernalia charge. He was notified of the appearance time and date on October 20 and attempted to change the time to avoid conflict with his work

schedule but was unable to do so. He had not missed any overtime which was a frequent requirement and employer has a no fault attendance for sick days. The written warning and final warnings were both issued on September 6, 2005 and a second final warning was given on October 18, 2005 because of the October 14 absence related to illness. (Employer's Exhibit 1)

On May 10 and August 29 he was tardy and was issued a written warning on the 29th. He left early with notice due to illness on July 28 and October 14 and called to report absences due to personal business on July 15. Employer did not have a reason noted for claimant's absence on August 13 but claimant recalled that he may have been sick.

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 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).

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. An absence related to a court appearance may certainly be considered an issue of personal responsibility but an employee should not have to face contempt of court for failure to appear or the loss of his job if he makes that court appearance. Claimant attempted in good faith to change the appearance date but could not which left him with no other reasonable choice than to miss work. Thus, the absence is considered excused. That the written and final warnings were issued on the same day and the second final warning was related to an absence because of illness is troublesome in spite of claimant's poor attendance history. However, since the final absence is considered excused, no current or final act of misconduct has been established and benefits are allowed.

DECISION:

The November 15, 2005, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/tjc