

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SCOTT E WEYEN**

Claimant

**APPEAL 15A-UI-05887-KC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIOUX AUTOMATION CTR INC**

Employer

**OC: 05/03/15**

**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 May 15, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 26, 2015. The claimant participated through Dennis McElwain, Attorney at Law. The employer participated through: Kim Van Zee, Human Resources Manager and Harm Wiersma, Crane Assembly Supervisor. Exhibits A – D were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying, work-related misconduct or did he quit without a good-cause reason attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a small parts crane assembler beginning March 29, 2010, and was separated from employment on April 28, 2015, when the employer terminated his employment.

Van Zee, Keith Wissink, Operations Manager, and Wiersma decided to terminate the claimant's employment because he did not appear for work on April 28, 2015 and did not call anyone in management to report his absence before his 7:00 a.m. shift, in violation of the employer's handbook. The claimant called Van Zee at 8:45 a.m. and advised that he had overslept. The claimant did not call his supervisor at least ten minutes before the shift or as soon as possible for anticipated absence, as required in the employer's attendance policy.

The claimant went through progressive warnings prior to April 2015. The employer has a five-step progressive corrective action process. On February 12, 2015 he received a verbal warning that he was absent without time off available, a written warning for a prior day that he was off without paid time off available, and a three-day suspension for prior violations. He was informed that a further violation of the attendance policy would result in a five-day suspension.

He received a five-day suspension in March 2015 because he was absent and did not call in on time. Wiersma called the claimant at home about the suspension and told him the next violation would result in termination. On his return to work, the claimant signed, but provided no written comments on, the corrective action document. On March 19, 2015, the claimant overslept and called in late to work. Wiersma called him and offered the claimant the opportunity to borrow from future paid time off to cover that absence. The claimant accepted. On March 20, 2015, Van Zee, Wiersma and Wissink met with the claimant about his attendance and advised that if he was unable to sleep at night and thought he might not be able to get to work in the morning he could leave a message at night so that he did not incur more disciplinary actions.

The claimant had not had much accrued time off because he was absent for an extensive period in 2013 and 2014 due to a work-related injury, multiple surgeries to address the shoulder injury, and the time needed to recover. (Exhibits A – D) The claimant had absences due the shoulder during the period covered by the unemployment insurance claim.

The claimant had two examinations in April 2015 at a pain clinic regarding his shoulder pain. The medications initially prescribed on April 2, 2015, for pain and sleep were ineffective. On April 30, 2015, the physician changed his pain medication. (Exhibit C)

The night before and early morning of April 28, 2015 the claimant was awake until approximately 4:00 a.m. due to pain. He later fell asleep, overslept and did not call in before his shift started. The claimant did not call during the night, as the employer had offered, because he expected to go to work.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on April 28, 2015. He was last warned in March 2015, that he faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred in February and March of 2015.

## **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). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The claimant's absences or tardiness due to insomnia were not properly reported.

The claimant had a medical condition for which he sought treatment and experienced incomplete pain relief despite use of medication. The claimant, however, repeatedly failed to call in due to insomnia before his shift started, despite the employer offering him the opportunity to call at night if he was awake so that he would not incur more discipline due to attendance. The employer attempted to help the claimant keep his position by offering an alternative call-in process for him due to insomnia and permitted him to use unearned paid time off to cover an unexcused absence.

The claimant's limited accrued paid time off that arose because of his extensive absences due to a workplace injury is not an excuse for his repeated tardiness. He was given an alternative reporting process to address days on which he would not work due to pain-related insomnia and would not accrue disciplinary action if he followed that process. He failed to use that process.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. 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 May 15, 2015, (reference 01) unemployment insurance decision is affirmed. 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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Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

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