

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA V GUERRERO**  
Claimant

**APPEAL NO. 09A-UI-18649-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOC SERVICES LLC**  
Employer

**OC: 11/08/09**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 8, 2009 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 26, 2010. Claimant participated. Employer responded to the hearing notice instructions but was not available when the hearing was called and did not participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a technician and was separated from employment on December 15, 2009. The final incident was an occasion when he had a family emergency (his grandfather, with whom he lives, was having difficulty breathing and was admitted to the hospital) and asked to leave four hours early. Permission was granted but he was told he would be issued a point against his attendance. Other points had been added for being one minute late when the policy book allowed leeway of seven minutes past the scheduled start time.

**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).

An employer's no-fault or point system absenteeism policy is not dispositive of the issue of qualification for benefits. The employer's failure to apply the tardiness procedures according to the written policy and claimant's one emergency absence are not considered unexcused. Benefits are allowed.

**DECISION:**

The December 8, 2009 (reference 02) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld effective the week ending November 14, 2009 shall be paid to claimant forthwith.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs