

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS HRUBES
Claimant

APPEAL NO: 13A-UI-02651-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA MOLD TOOLING CO INC
Employer

**OC: 11/18/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 28, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 2, 2013. The claimant participated in the hearing. Lynne Swenson, Senior Human Resources Manager and David Lague, Supervisor, 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 body assembler for Iowa Mold Tooling from July 7, 2008 to January 28, 2013. He was discharged from employment due to a final incident of absenteeism that occurred January 28, 2013.

The employer uses a no-fault, point based attendance policy and employees are terminated upon reaching eight points within a rolling calendar year. The claimant worked from 6:00 a.m. to 4:30 p.m. Monday through Thursday. He reported for work at 6:00 a.m. Monday, January 14, 2013, but left at 7:57 a.m. and received one attendance point. He testified he had a headache and a stomachache. He reported for work at 6:00 a.m. Tuesday, January 15, 2013, but left at 7:00 a.m. and received one point. He reported for work at 6:00 a.m. Monday, January 21, 2013, but left at 7:00 a.m. and received one point. He testified he also had a headache and stomachache that day as well. The claimant called in and asked for a personal paid day off Tuesday, January 22, 2013, but his request was denied by his manager. David Lague, the claimant's manager, denied his request for a personal paid day off because he usually only allows two to three employees who make a request in advance to use personal paid time off so the line is covered and he had already given personal paid days off to other employees who made their requests in advance. Additionally, because the employer works a four-day workweek, if employees request Mondays or Thursdays off it gives them a three-day weekend

and the employer is sometimes suspicious of employees who show a pattern of calling off on those days. On Thursday, January 24, 2013, the claimant was a no-call/no-show and received three points. On Monday, January 28, 2013, the claimant was considered a no-call/no-show because he did not call until 11:04 a.m. and was assessed three points for a total of ten points. When he did call he asked for a personal day off but Mr. Lague denied his request because he did not call in prior to the start time of his shift and receive approval from Mr. Lague. The employer terminated the claimant's employment for exceeding the allowed number of attendance points. The employer's policy states employees will receive written warnings at six and seven attendance points but the claimant never returned to work after accumulating his third point January 21, 2013, and consequently the employer was unable to issue him any written attendance warnings.

The claimant stated he went home early January 14, 15 and 21, 2013, and did not report for work January 22, 24 and 28, 2013, because he was upset with his supervisor Jake Smith. The claimant told Mr. Lague he objected to working for a felon, referring to Mr. Smith. On January 14, 2013, the claimant "flipped Mr. Smith off" outside the employer's property. Mr. Lague talked to the claimant about his attendance January 14, 2013, and the claimant stated he was going to try to "push the buttons of IMT" so it would point him out on attendance "so (he) will be fired and can collect unemployment because I have nearly \$12,000.00 in unemployment benefits."

He was also upset because he felt Mr. Smith monitored him more closely than he did other employees. The claimant talked to Mr. Lague about Mr. Smith and Mr. Lague stated he would talk to Mr. Smith but when he did so Mr. Smith stated he did "ride" the claimant a little more than other employees because he caught the claimant using the employer's materials to play a bowling game during work hours; had open cans of soda on the line in violation of the employer's policy, was caught at his locker away from his work station on occasion and filled out vacation or personal paid days off forms during work time when the production line was running instead of doing so on his break or lunch periods or on his personal time, which also slowed the production line.

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 left early January 14, 15 and 21, 2013, called in January 22, 2013, and was a no-call/no-show January 24 and 28, 2013, for a total of ten points on an eight point scale. He admitted his attendance issues were due to his dissatisfaction and inability to get along with Mr. Smith, rather than due to illness. While Mr. Smith may have supervised him more closely than he did other employees, the claimant's actions as listed by the employer validated Mr. Smith's concerns and legitimized his decision to pay closer attention to the claimant's behavior. The claimant also told Mr. Lague January 14, 2013, he was going to try to get fired so he could collect unemployment insurance benefits and his actions lend credence to Mr. Lague's testimony about that conversation. The employer has established that the claimant was not present to receive his two written warnings for attendance and his final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

DECISION:

The February 28, 2013, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css