

**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**

**LEE A STALLINGS  
PO BOX 13  
COOS BAY OR 97420**

**NORTHERN IOWA DIE CASTING INC  
702 E RAILROAD  
LAKE PARK IA 51347**

**Appeal Number: 04A-UI-05725-LT  
OC 04-18-04 R 12  
Claimant: Appellant (1)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the May 11, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 14, 2004. Claimant did participate. Employer did participate through Loretta Schweitzer and Mark Garms.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time parts assembler and cleaner through June 3, 2003. May 30, 2003 was his last day worked and he stopped coming after that through June 3, 2003. Claimant was arrested on May 31, 2003 and held in jail for ten days, until about June 10, 2004. Employer has no record of claimant's son-in-law calling for him but claimant admits he did not have him call

for five or six days after the arrest. Claimant was scheduled May 31, June 2 and June 3 and employer's policy is termination due to job abandonment after two no-call/no-show absences.

Claimant had other attendance problems on April 7 and 8 related to transportation issues and had other no-call/no-show absences on April 4, 22 and 23. Employer gave claimant a final verbal warning on April 5, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 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 as it was unreported. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

#### DECISION:

The May 11, 2004, 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.

EMPLOYER:

Please take note of the following case law and regulation governing attendance related to unemployment compensation insurance decisions for future reference. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

871 IAC 24.25(4) provides:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

dml/b