

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CHAD A NOAH**  
Claimant

**SUKUP MFG CO INC**  
Employer

**APPEAL 14A-UI-06904-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/01/14**  
**Claimant: Appellant (1)**

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 June 23, 2014 (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2014. Claimant participated. Employer participated through Mary Amsbaugh, Human Resources Generalist; Jon Swanson, Plant Manager; and Samantha Petersburg, Human Resources Generalist. The administrative law judge took official notice of the administrative record, including fact-finding documents. Employer's Exhibits One through Seven were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker since August 2003 and was separated from employment on June 2, 2014. His last day of work, prior to the morning of June 2, was a partial day on Saturday, May 24, 2014. He left early for a child's event. He was last absent on May 30 when he was a no-call/no-show due to an unreported personal illness or injury and did not provide a medical excuse. He did not call because he and his girlfriend had no money for phone cards but did not ask to borrow anyone else's phone or call from the doctor's office when he saw the doctor that day after 9:00 a.m. The doctor's office said they would fax an excuse for Friday but he did not verify that the employer received it or inquire about his employment status. Absences must be reported a half hour before the shift start time. His girlfriend also works for the employer but did not report a half hour early to notify the employer of his absence or find a phone to use to report the absence for him. He reported absences due to a personal back injury on May 27, 28 and 29. He saw a doctor on Tuesday, May 27 and provided a medical excuse for those three days.

The employer has a no-fault attendance policy that treats all absences the same, regardless of reason but may evaluate each absence on its own merit (Employer's Exhibit One). Claimant ran out of sick leave in November 2013 and has also since exhausted his vacation leave. He arrived late or left early multiple times between August 2012 and November 2013, when he did not make advance appointments with his divorce attorney. His shift runs from 6:00 a.m. to 4:30 p.m. so the reasons given for arriving late are not consistent with meeting with an attorney such that he would arrive late for his shift. He switched from a 7:00 a.m. to a 6:00 a.m. start time on August 29, 2013. Start times fluctuate with the busy season. One morning he went in the ditch so he was late. He lives ten miles from work. Other reasons with unspecified dates for leaving early besides seeing his attorney were because of children's events and two dentist's and/or doctor's appointments.

He had been warned in writing on January 10, 2014 about properly reporting his absences and adhering to the attendance policy (Employer's Exhibit Four). He had verbal counseling meetings on August 28, 2013 about unacceptable attendance (Employer's Exhibit Three) and on April 15, 2013 that he must bring a doctor's note if he misses work due to an illness (Employer's Exhibit Two). Between July 1, 2013 and January 7, 2014 he was tardy 40 times, had 13 unexcused absences, and left early 10 times (Employer's Exhibit Six). Overlapping a bit between December 30, 2013 and extending through the date of separation on May 30, 2014, claimant was tardy 3 times, had 16 unexcused absences, and left early 12 times (Employer's Exhibit Seven).

#### **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. *Cosperv. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for 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 was unexcused because it was not properly reported. Even if counting tardiness alone and not including other absences or leaving early, his history of unexcused absenteeism, combined with the final absence, is considered greatly excessive. Benefits are withheld.

**DECISION:**

The June 23, 2014 (reference 01) unemployment insurance decision is affirmed. 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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