

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRIS M BACKOFF**  
Claimant

**FISHER CONTROLS INTERNATIONAL LLC**  
Employer

**APPEAL 15A-UI-08569-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/02/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 29, 2015, (reference 02) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 20, 2015. Claimant participated personally and through witness, Jason Brown. Employer participated through labor relations manager, Tammy DeJong. Claimant's Exhibit A was received. Employer's Exhibits 1 through 3 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 welder from February 28, 2011, and was separated from employment on July 13, 2015, when he was terminated.

Employer has a policy that requires employees to call employer before their shift starts if they will be absent.

On June 23, 2014, claimant applied for Family and Medical Leave Act (FMLA) leave for the serious health condition of a parent. While his application was pending, claimant took leave from June 23 through 27, 2015, but failed to call his supervisor each day to report his absence. Employer gave claimant a written warning for failing to follow its call-in policy.

On November 24, 2014, employer suspended claimant for three days for no-call/no-show absences on October 27 and 28, 2014. On these dates, claimant was absent due to reasons covered by FMLA. However, claimant did not report to employer or its third-party administrator for FMLA leave that he was going to be absent. Claimant was warned that any further failure to report an absence would result in discipline up to and including termination.

On July 9, 2015, claimant failed to report to work and did not call employer prior to his shift began to report his absence. Claimant called labor relations manager Tammy DeJong after his shift began and left a voice message stating he would not be reporting to work that evening. Claimant missed work because he was trying to meet a deadline to complete FMLA paperwork for a previous absence.

Claimant was terminated on July 13, 2015, for excessive absenteeism.

#### **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 § 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 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 is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. 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. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive.

**DECISION:**

The July 29, 2015, (reference 02), 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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Decision Dated and Mailed

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