

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

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WELLS DAIRY INC  
PO BOX 1310  
LE MARS IA 51031-1310

Appeal Number: 04A-UI-01889-LT  
OC 01-25-03 R 01  
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 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 19, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 10, 2004. Claimant did participate. Employer did participate through Jamie Spangler.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time crew leader through January 27, 2004 when he was discharged. On January 26 claimant was absent because he did not feel comfortable driving in snowy weather. If the Iowa State Patrol advises against travel, the absence would be excused

pursuant to the employee handbook. There were no travel advisories for the area issued by the State Patrol.

On November 18, 2003, August 10, July 31, April 15, March 13, and March 1 claimant was warned about absenteeism, as well as other warnings over the past year and a half.

He was tardy on December 14, 15 and 16, October 16 and April 1 and was counted tardy due to his failure to punch in on October 1 and 9, 2003. He was also absent on February 15 due to weather. He saw a semi trailer overturned because of weather but it was not blocking traffic and there was no travel advisory for that day.

One instance of tardiness was related to having the prior day off prior to the schedule change; however, he did not call to find out the new schedule, as is claimant's responsibility. He forgot his time/ID card on one occasion in October 2003 but the employer's policy requires employees to carry that at all times.

#### 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. The final absence was unexcused as there were no travel advisories in place. That absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The February 19, 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.

dml/b