

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY C DAYTON**  
Claimant

**APPEAL NO. 09A-UI-11134-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AG PROCESSING INC A COOPERATIVE**  
Employer

**Original Claim: 05/31/09  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 28, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 19, 2009. Claimant participated. Employer participated through Ernie Kiley and John Jameison and was represented by Alyce Smolsky of Johnson & Associates.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a prep operator and was separated on May 29, 2009. He missed work on May 24, 25, and 26, 2009 and failed to report his absences to the employer because he was incarcerated. His mother called on his behalf, but employer requires personal notification unless an employee is hospitalized and unable to do so. He knew his job was in jeopardy due to attendance issues. Employer found out he was incarcerated when he called on May 27, 2009. Four felony counts of intimidation with a deadly weapon on a peace officer are pending. Coworker Bromley, who was also arrested and missed work for the same reason, was also discharged.

**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.

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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant did not report his absences and they were unexcused for that reason and because he was incarcerated. Three no-call, no-show absences on consecutive work days is unreasonable and amounts to disqualifying misconduct even without prior warning. Benefits are withheld.

**DECISION:**

The July 28, 2009, 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw