

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARCOS RODRIGUEZ**  
Claimant

**APPEAL NO: 09A-UI-04287-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VANTEC INC**  
Employer

**OC: 02-08-09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 10, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 13, 2009. The claimant participated in the hearing. Larry Heimlicher, Chief Operating Officer participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production operator for Vantec from July 16, 2008 to January 28, 2009. The employer changed its attendance policy November 11, 2008. Employees started with eight points and various point totals were deducted depending on the attendance infraction. On November 1, 2008, the claimant went home early because he forgot to leave his girlfriend the keys to her vehicle and received one point; on November 6, 2008, he attended a funeral and received one point; on November 11, 2008, he was sick and received one point; on November 16, 2008, he clocked out at 8:30 due to illness and received one point; on November 25, 2008, he left early to see his attorney and received one-half point; on November 30, 2008, he left early and received one point; on December 9, 2008, he was absent due to weather conditions and received one point; on January 15, 2009, he took a personal day and received one point; and on January 28, 2009, he failed to punch out and received one-half point leaving him with zero points and his employment was terminated for violating the employer's attendance policy. The employer issues notifications in employees' paychecks stating how many points they have beginning at four points. The claimant received a notification December 4, 2008, when he had two points left; a notification December 23, 2008, when he had one point left and a notification January 15, 2009, when he had one-half point left. The claimant disputes some of his points, especially where he left early and was assessed a full point, but he did not complain at the time the incidents occurred. The claimant accumulated eight absences between July 16, 2008 and November 1, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 claimant accumulated nine absences between November 1, 2008 and January 28, 2009, in addition to the eight occurrences he had from July 16, 2008 to November 1, 2008. 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 absenteeism, is considered excessive. Therefore, benefits must be denied.

**DECISION:**

The March 10, 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.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs