

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL L SVEEN
Claimant

APPEAL NO. 07A-UI-07868-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EATON CORPORATION
Employer

**OC: 07/08/07 R: 02
Claimant: Appellant (2)**

Iowa Code § 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 August 6, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 30, 2007. Claimant participated. Employer opted not to participate.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time maintenance worker from May 23, 1988 until July 5, 2007, when he was discharged for being 20 minutes late on July 2, 2007 after he locked his keys in the house. There was a supervisory change in October 2006 and claimant had 17 years of perfect attendance until October 22, 2006, when he was tardy due to making a mistake in resetting his clock at the change to daylight savings time. On December 24, 2006, he overslept because he had won a large amount of money the night before and could not get to sleep for some time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

Three documented instances of tardiness in 19 years of service do not rise to the level of disqualification. Benefits are allowed.

DECISION:

The August 6, 2007, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw