

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON P RAMSEY
Claimant

APPEAL NO. 09A-UI-07720-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXEL INC
Employer

**Original Claim: 04/26/09
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 19, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 12, 2009. Claimant participated. Employer did not respond to the hearing notice instructions and did not 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 most recently worked full-time as a laborer and was separated on April 23, 2009. The final absence occurred on that date, when the claimant's alarm failed and he was tardy. All other absences were related to properly-reported illness or leaving early with a supervisor's permission.

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).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Tardiness related to an alarm failure is generally considered an unexcused absence. However, one unexcused absence is not disqualifying, since it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The May 19, 2009, 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