

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN L ROOF**  
Claimant

**APPEAL NO. 13A-UI-12831-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMAHA STANDARD LLC**  
Employer

**OC: 10/20/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 12, 2013, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2013. Claimant participated. Employer participated through senior human resources generalist Amber Brouhard. Thomas Kuiper of Talx represented the employer.

**ISSUE:**

Was the claimant discharged for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a maintenance technician from 1998, and was separated from employment on October 23, 2013. He was last absent on October 23, when he was tardy due to oversleeping related to back pain during the night. He clocked in late at 8:53 a.m. for his 8 a.m. shift and did not call the employer to say he would be late or give a reason for the tardiness. He had been warned in writing on October 22, 2013, about a late clock in on October 8. Claimant had been using Family Medical Leave Act (FMLA) leave on and off for the past ten years due to his cancer and back pain, and caring for his wife. When he was late, it was because of his back condition or taking care of his wife. He did not tell human resources about the reasons for his tardiness or absences because they told him he had exhausted his FMLA. He did give his supervisor an explanation as to why he was missing work. He disagreed with the figures but did not keep independent track. He was aware of the warning about his attendance point level. On June 10, he called to report tardiness; on June 12, he left early and did not return to work or notify human resources of the need to use vacation or FMLA; on June 27 he said he would be late but gave no reason; on July 2 and 15, he was tardy without giving a reason; and on September 23, he was absent without giving a reason. Employees may clock in up to a half hour before their shift so the employer allows no grace period. Tardiness is counted as missing up to half of the shift and more than that is counted as an absence.

Attendance occurrences drop off after a rolling calendar year. Claimant signed for the attendance policy on June 5, 2013 and December 2007, and June 2008. Point totals are available from human resources and it notifies employees of point totals at six points with discharge at eight. The employer began telling claimant about his points when he reached four.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused because it was not properly reported. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The November 12, 2013, (reference 01) decision is affirmed. 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/pjs