

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID FERREIRA**  
Claimant

**APPEAL NO: 15A-UI-08954-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K&S LUMBER LLC**  
Employer

**OC: 03/15/15**  
**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 August 5, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 28, 2015. The claimant participated in the hearing. Gayle Jones, Bookkeeper and Mike Woods, Operations Manager, 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 edger for K&S Lumber from October 7, 2014 to July 20, 2015. He was discharged from employment due to a final incident of absenteeism that occurred on July 20, 2015.

The employer's policy allows employees to accumulate 40 attendance points per year. An incident of tardiness of two hours or less with notification to the employer results in two points and an incident of tardiness of one hour or more without notification results in eight points. Three or more incidents of tardiness or absenteeism within 90 days may result in termination. The policy also states the allowed points per year are a guideline and the employer may discharge any employee it deems to be abusing the point system. It issues verbal warnings following each incident but does not issue written warnings.

On April 21, 2015, the claimant was scheduled at 6:00 a.m. and arrived at 7:46 a.m.; on May 12, 2015, he was scheduled at 7:00 a.m. and arrived at 7:37 a.m.; on May 20, 2015, he was scheduled at 7:00 a.m. and arrived at 7:48 a.m.; on June 8, 2015, he was scheduled at 6:00 a.m. and arrived at 6:34 a.m.; on June 10, 2015, he was scheduled at 6:00 a.m. and

arrived at 6:17 a.m.; on June 19, 2015, he was scheduled at 6:00 a.m. and arrived at 6:16 a.m.; on June 26, 2015, he was scheduled at 6:00 a.m. and arrived at 6:19 a.m.; on July 10, 2015, he was scheduled at 6:00 a.m. and arrived at 6:10 a.m.; and on July 20, 2015, he was scheduled at 6:00 a.m. and arrived at 6:45 a.m.

The employer talked to the claimant about his tardiness on each occasion he was late. On July 10, 2015, Operations Manager Mike Woods told the claimant he could no longer tolerate his tardiness. The claimant stated he did not have dependable transportation and Mr. Woods stated he needed to correct the problem as the employer could not start production without the claimant and consequently the other employees ended up standing around until he arrived. The claimant indicated he understood and it would not happen again. When the claimant was 45 minutes late July 20, 2015, the employer notified him it was terminating his employment.

### **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 § 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.

Iowa Admin. Code r. 871-24.32(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 incidents of tardiness between April 21 and July 20, 2015, due to transportation issues. While the employer should have issued the claimant a written warning, the employer has established that the claimant was verbally warned that further unexcused absences could result in termination of employment July 10, 2015, and the final absence July 20, 2015, was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

**DECISION:**

The August 5, 2015, reference 02, 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs