

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAN M ELDER**  
Claimant

**APPEAL NO. 07A-UI-11284-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NSK CORP**  
Employer

**OC: 11-04-07 R: 01  
Claimant: Appellant (1)**

871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 29, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 20, 2007. The claimant did participate. The employer did participate through Greg Hart, Business Unit Leader, and (representative) Judy O’Grady, Human Resources Manager.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a grind operator, full-time, beginning October 2, 2006, through October 25, 2007, when he was discharged.

The claimant was discharged from employment due to a final incident of absenteeism that occurred on October 23, 2007. The claimant was last warned in April 2007 that he faced termination from employment upon another incident of unexcused absenteeism. Prior absences occurred on October 24, 2006 (tardy); December 10, 2006; February 10, 21, 2007; March 27, 2007; April 15, 16, 2007; September 11, 14, 21, 29, 2007; and October 23, 2007.

The claimant was absent on October 23 because he was unable to wake up when his alarm clock went off because he had been doing illegal drugs.

The employer has an employee assistance program that the claimant attempted to use to seek help, but he did not follow through with the required steps. The claimant called the employee assistance number, spoke to a woman for a few minutes, and then hung up without completing the required steps to seek assistance. The claimant knew via the employer’s handbook or policy book how to seek assistance but did not follow the procedures. If the claimant had followed the procedures, he might have saved his own job. The claimant is responsible for the consequences of his own actions; be it taking drugs or failing to follow the procedures for seeking help.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the 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 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and that the final absence was not excused. The claimant is responsible for the consequences of taking drugs. The employer was not responsible for the claimant oversleeping. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The November 29, 2007, 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.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw