

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN W FITZGERALD
Claimant

APPEAL NO. 07O-UI-03278-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ORIENTAL TRADING CO
Employer

**OC: 12-31-06 R: 01
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 January 23, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 16, 2007. The claimant did participate. The employer did participate through Amy Walkonen, Human Resources Generalist, Rich Prince, Facility Manager of Underwood Division and Gary Graham, Production Group Supervisor and was represented by David Williams of TALX UC eXpress. Claimant's Exhibit A was received. Employer's Exhibits One and Two were entered and received into evidence.

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 shipping operator full time beginning July 29, 2004 through January 4, 2007 when he was discharged.

REASONING AND CONCLUSIONS OF LAW:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time shipping operator for Oriental Trading from July 29, 2004 to January 4, 2007. He was discharged from employment due to excessive unexcused absenteeism. The employer's policy states that employees must report within two hours of the start of their shift and must leave a voicemail stating whether they will be absent or tardy. Points drop off after 12 months. On January 20, 24, and 26, 2006, he left early and received one-half point on each occasion; on January 27, and 30, 2006, he was absent due to illness and received one-half point for each occasion; on January 31, 2006, he was absent without providing a reason and received one-half point; on February 23, 2006, he left early and received one-half point; on February 24, 2006, he received a final written warning for accumulating nine attendance points; on April 25, 2006, the claimant was tardy and received one-half point; on

May 9, 2006, he left early and received a half-point; on May 19, 2006, he called in sick and received one point; on May 22, 2006, he received a written warning for attendance after accumulating nine points; on June 2, 2006, he was tardy and received a half-point; on June 5, 2006, he left early and received a half-point; on July 21, 2006, he left early and received a half-point; on July 22, 2006, the claimant received one point; on July 26, 2006, he called in sick and received one point; on July 28, 2006, he was tardy and received one-half point; on September 8 and October 2, 2006, he left early and received one-half points; and on October 10, and 12, 2006, he left early and received one-half point for each absence. On January 2, 2007, the claimant called in and said he was ill and would be in around 10:30 a.m. but did not call or show up for work again that day and the employer terminated his employment. The claimant disagreed with some of his points but did not call human resources about them. He also showed phone records that he called in (Claimant's Exhibit A) on January 2, 2007. The employer does not disagree that he called, only that he said he would be in that day and did not show up for work.

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 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). The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The claimant did call in on January 2, 2007 and indicated that he would be in around 10:30 a.m., but he failed to show up for work or call in again to indicate that he would not be in for the rest of the day. The administrative law judge is persuaded that the claimant indicated in his call in on January 2, 2007 that he would be in by 10:30 a.m., but failed to call in again or show up for work. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The January 23, 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/css