

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK D SCHULZ**  
Claimant

**APPEAL NO: 06A-UI-08665-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROCKWELL COLLINS INC**  
Employer

**OC: 07-23-06 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 16, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 27, 2006. The claimant did participate. The employer did participate through Tricia Raap, Human Resources Specialist, Diane Wilkinson, Registered Occupational Nurse, and Curt Hansel, Second Shift Facilitator. Department's Exhibit D-1 was received. Employer's Exhibit One was received.

**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 senior assembly operator full time beginning March 18, 1991 reinstated March 11, 2003 through July 20, 2006 when he was discharged. The claimant was discharged for not timely providing a doctor's note in a timely manner to the employer.

The claimant received the fact-finding decision that denied him benefits on Friday, August 18. The appeal was due on August 26, which was a Saturday so the deadline was extended to Monday, August 28, 2006. The claimant faxed in his appeal on August 28, 2006 sometime after 4:30 p.m. when the office closes. The Iowa Workforce Development Appeals Section recorded the appeal as having been received on August 29, when it was pulled off the fax machine and date stamped by an employee. Simply because the fax was transmitted after business hours on August 28 does not render it received the following day. Since correspondence postmarked on the due date is considered received when postmarked even though it was not actually received on the due date; likewise, a fax transmitted on the due date but after business hours is considered received when faxed.

The claimant called in on July 17 and spoke to Diane Wilkinson, the occupational nurse and told her he was ill and would not be able to attend work. The claimant's own record of events records that "Diane stated that I needed to get documentation excusing my absence if it went

beyond three days or more.” The claimant saw a doctor and was treated. He continued to call in indicating he was going to be absent due to illness. The claimant was physically able to leave his home to attend doctor’s appointments. The claimant was absent from work on July 17, 18 and 19. When he called in July 19 the claimant was told by Diane that he needed to provide a doctor’s note excusing him from work before the start of his shift on July 20 or he would be considered as AWOL under the employer’s attendance policy. The claimant had access to the policy and was specifically told what he needed to do to comply with the policy. The claimant failed to provide a doctor’s note for his absence until July 26, 2006. The claimant was absent from work due to illness or non-work-related injury until August 7, 2006. The claimant did not follow the employer’s policy for properly reporting his absence over three days relating to illness. The claimant was discharged on July 27, 2006 for his failure to provide the doctor’s note by July 20, 2006 as he had been instructed. On July 19 the claimant was told that he did not need to personally deliver the note, he could have his wife or another family member deliver it, he could fax it to the nurse’s office or he could request his doctor fax it to the employer. The claimant did not take any action to insure that the employer had the note by July 20. Ms. Wilkinson is sure she provided the information to the claimant about the doctor’s note as she has between 10 and 20 employees a week in the same situation and it is her policy to tell each employee when their doctor’s notes need to be delivered to her. The claimant was able to provide the note in a timely manner had he chosen to do so.

The claimant filed a grievance in the matter that his union has chosen not to pursue after determining that the company appropriately followed the contract.

#### **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).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The administrative law judge cannot conclude that the claimant properly reported his absence due to illness since he did not provide the employer with a doctor's note in a timely manner. The claimant was specifically told of the policy and knew that he had to comply with it to maintain his employment. The written policy is available in the handbook and in the union contract. Even after being told on July 17, the first day he called in sick of his need to obtain a doctor's note for absences in excess of three days, then again when the claimant was told on July 19 that his note was due prior to the beginning of his shift on July 20; the claimant still did not turn in doctor's notes to the employer until July 26. The claimant has not established any good reason for his delay. He had access to a fax machine or a telephone to ask the doctor's office to submit the notes for him. The claimant was able to leave his home to attend doctor's appointments, he was not incapacitated to the point where he could not comply with the employer's policy. Because the claimant had fair warning of what was expected of him and he failed to comply, his actions constitute misconduct sufficient to disqualify him from receiving unemployment insurance benefits. Benefits are denied..

**DECISION:**

The August 16, 2006, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs