

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARLUS D DOGETT**  
Claimant

**APPEAL NO. 09A-UI-11326-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PORTZEN CONSTRUCTION INC  
DUBUQUE PLUMBING & HEATING CO**  
Employer

**OC: 07-27-08**  
**Claimant: Appellant (1)**

Iowa Code § 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 July 28, 2009, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on July 28, 2009. The claimant did participate. The employer did participate through Mary Kay Portzen, Office Manager and Human Resource Representative. 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 carpenter full time beginning April 28, 2009 through June 18, 2009 when he was discharged.

The claimant called the employer on June 16 and indicated he would be into work by 8:00 a.m. but then did not show up for work or call back to indicate that he was not coming into work. On June 16 the claimant did not call the employer at least one-half hour prior to the beginning of his work shift. On June 17 the claimant was a no call-no show for work. On June 18 the claimant called the employer at 9:45 a.m. and indicated he would be into work later and then did not show up for work that day. On June 18 the claimant did not call the employer at least one-half hour prior to the beginning of his work shift. The claimant had received the employer's attendance policy which outlined the consequences of his failure to timely report his absences. The claimant was discharged for failing to follow the employer's attendance policy. The claimant was also absent on May 20, 2009.

**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 § 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 the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The July 28, 2009, reference 04, 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