

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY COTTON**  
Claimant

**APPEAL NO. 12A-UI-12337-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OLYMPIC STEEL IOWA INC**  
Employer

**OC: 09/16/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 8, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on November 9, 2012. Claimant participated and was represented by John Doak, attorney at law. Employer participated through Operations Manager Sean McKay and Human Resources Manager Johanna Mahoney. Employer's Exhibits 1 through 3 were received. Claimant's Exhibits A through G were received.

**ISSUE:**

Was the claimant discharged for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a machine operator and was separated from employment on September 18, 2012. On September 16 he was a no-call, no-show. He said he called in but there is no record of a call at any of the appropriate numbers. His foreman asked him to show him on his cell phone when he called in and he could not, since he called from his home phone. His phone records later reflected that he was one digit off because he looked at the number on his cell phone to call from his home phone. He did not call from his cell phone because the battery was low. He was upset and talked over the machine, so he did not realize he dialed the wrong number. He had car trouble and missed entire shift. He had been warned in writing on July 27, 2012 and July 12, 2012. (Employer's Exhibits 2 and 3) He was absent on April 14 (a Saturday, for unknown reasons), June 30 (a Saturday, for unknown reasons), July 23 (unknown reason), and July 24 (unknown reason). He was not absent on Saturday, September 8, because overtime was not mandatory and he reported to foreman Dustin or Nick that he would not work that day. He was tardy on July 8 by 1 hour 49 minutes, July 17 by 4 minutes, and August 10 by 56 minutes. On August 8 he missed a time clock punch.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. Employer has established that claimant was warned that further unexcused absences could result in termination of employment and that the final absence was not excused, whether or not he called to report the absence, because it was related to transportation. The final absence, in combination with claimant's history of unexcused absenteeism and tardiness, is considered excessive. Benefits are withheld.

**DECISION:**

The October 8, 2012 (reference 01) decision is affirmed. 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw