

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NATHAN G LUTGEN
Claimant

APPEAL NO: 18A-UI-10741-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IDEAL INDUSTRIES INC
Employer

OC: 01/28/18
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 October 18, 2018, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 14, 2018. The claimant participated in the hearing. Kayleen Schott, Controller; Wanda Even, Production Supervisor; and Tom Kuiper, Employer Representative; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time welder for Ideal Industries, Inc. from April 9, 2018 to September 7, 2018. He was discharged from employment due to a final incident of absenteeism that occurred on September 13, 2018.

The employer uses a point-based attendance policy and employees are terminated upon reaching three points within a rolling 90 day period. If an employee is tardy one hour or less he receives one-fourth of a point; if he is more than one hour tardy he receives one one-half of a point; if he is absent for a full day and reports his absence before the start time of his shift he receives one point; and if he fails to call or does not call the employer until after the start time of his shift he receives two points. Employees receive a verbal warning upon accumulating one and one-half points; a written warning after accumulating two points; a suspension or probation upon reaching two and one-half points; and are discharged upon reaching three points. The employer allows for excused absences if accompanied by a doctor's note. Points drop off after 90 days.

The claimant worked 6:00 a.m. to 4:30 p.m. Monday through Thursday. On August 14 and August 22, 2018, the claimant called in and reported he did not have transportation and received one point for each absence. On Thursday, September 13, 2018, the claimant texted his supervisor at 8:44 a.m. and said he needed to go to a doctor's appointment. When he returned to work Monday, September 16, 2018, he did not provide a doctor's note and the

employer imposed two attendance points because he failed to properly report his absence September 13, 2018, and did not have a doctor's excuse.

The claimant received a written warning September 5, 2018, after accumulating two points and was told his job was in jeopardy. There is no evidence that the claimant's absences were related to illness.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The October 18, 2018, reference 02, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn