IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DAVID M SPERFSLAGE Claimant **ARCHER-DANIELS-MIDLAND CO** Employer	**APPEAL 17A-UI-04715-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/09/17** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 26, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 22, 2017. Claimant participated. Employer participated through human resources manager Kristen Carr. Employer Exhibit One was admitted into evidence with no objection.

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 an operator 1 from May 29, 2011, and was separated from employment around January 11, 2017, when he discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences, tardies, and leaving early, regardless of reason for the infraction. Employer Exhibit One. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving twenty-four points in a rolling twelve month period. Employer Exhibit One. The employer requires employees contact the employer and report their absence within the first fifteen minutes after the start of their shift or it is considered a no-call/no-show. Employer Exhibit One. Claimant was aware of the employer's policy.

The final incident occurred when claimant was a no-call/no-show on January 2, 2017. Employer Exhibit One. Claimant's shift started at 6:48 a.m. and according to the employer's policy he had until 7:03 a.m. to contact the employer before his absence would be considered a no-call/no-show. Claimant contacted the employer around 7:12 a.m. Claimant reported to the employer that his alarm had not gone off and he was contacting the employer as soon as he had woken up. Claimant spoke to his supervisor and the supervisor told claimant that the employer had already arranged coverage for claimant's shift and he was not to report to work that day. Claimant received eight points for the no-call/no-show, which gave him twenty-five total points in

the rolling calendar year. Prior to January 2, 2017, claimant was at seventeen points. Claimant then reported to work on January 3, 2017. Ms. Carr discovered claimant was a no-call/no-show on January 2, 2017. Ms. Carr interviewed claimant on January 3, 2017 and he indicated his alarm had not gone off and he contacted the employer as soon as he woke up. Ms. Carr then suspended claimant pending investigation. Around January 11, 2017, Ms. Carr then contacted claimant and told him he was discharged.

Claimant was last warned on January 27, 2016, that he had fourteen points. Employer Exhibit One. Claimant was warned that "[a]ny further attendance issues may result in further discipline, up to and including termination." Employer Exhibit One. Claimant was again advised about point policy. The employer also issued point notifications in January and July to inform employees how many points they have. Claimant also accrued attendance points on: November 17, 2016 (absent, three points, claimant did not provide a reason); October 10, 2016 (absent, three points, claimant could not get his truck started); October 3, 2016 (left early, two points, claimant did not provide a reason); June 2, 2016 (absent, three points, claimant did not provide a reason); April 25, 2017 (absent, three points, claimant did not provide a reason); and January 25, 2016 (absent, three points, the employer did not have any notes about any reason for the absence). Employer Exhibit One.

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. Benefits are denied.

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.

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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Two absences would be the minimum amount in order to determine whether these repeated acts were excessive. Further, in the cases of absenteeism it is the law, not the employer's attendance policies, which determines whether absences are excused or unexcused. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 557-58 (Iowa Ct. App. 2007).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. It is noted that claimant did not receive a final notice when he reached eighteen points because his final absence took him from seventeen points to twenty-five points; however claimant was warned regarding his absenteeism on January 27, 2016. Furthermore, after this warning, claimant accumulated six more attendance infractions, including his final attendance infraction on January 2, 2017. Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. *See Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

The employer has established that claimant was warned regarding his absenteeism and the final absence was not excused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The April 26, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as claimant 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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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/scn