

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-00883-LT
OC: 01-02-05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 21, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 28, 2005. Claimant did participate through the interpretation of Susana Jaquez and was represented by Brian Ulin of the UFCW Local 230. Employer did participate through Adriana Cobos.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker until December 10, 2004 when he was formally discharged by a woman from human resources who took his identification badge when he

reported to work. His last day worked was Tuesday, December 7 when he reported to his supervisor, Phil Spencer, he was going home due to having received an emergency call at work about his cousin, who was raised like a brother, being in a car accident who was hospitalized in Kansas City, Missouri. The absence print out shows that one point was assessed on December 7 and another on December 8 but no points were recorded on December 9 as employer considered claimant to have exceeded his attendance points by then and terminated the employment relationship. One attendance point according to employer's system is assigned for a no-fault absence with notice and/or permission from a supervisor. An unreported absence would incur two points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

While claimant did have prior absences and warnings therefor, the final absence period from part of December 7 through December 8 were reported to the supervisor who did not participate in the hearing and employer offered no evidence that the supervisor denied claimant permission to attend to his family member in the hospital. Because employer effectively terminated claimant as of December 9 and confirmed that separation when claimant reported to work on December 10, there is no evidence of a quit and the absence period was reasonable given the circumstances. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Benefits are allowed.

DECISION:

The January 21, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjf