

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**ERIC A PENROD**  
Claimant

**MID-STATES MFG & ENGR INC**  
Employer

**APPEAL 15A-UI-01005-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/04/15**  
**Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 22, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on February 17, 2015. The claimant participated. The employer participated through Amanda Snyder, Gary Cooper, and Josh Morse.

**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: The claimant was employed full time as a welder and was separated from employment on December 3, 2014 when he was discharged for excessive absenteeism.

The claimant had forty attendance occurrences leading up to his separation, during his ten months of employment. The employer had repeatedly asked the claimant for written documentation to excuse some of the absences, such as when the claimant visited his estranged daughter who was in a major accident. On November 20, 2014 the claimant was given a written warning; he also was placed on sixty days' probation and any future attendance occurrences would need documentation to be excused, or else he risked termination.

The claimant did not perform work on December 1 or 2 because he said he was sick and did not feel like he should be operating large machinery like welding. The claimant visited his doctor in the afternoon of December 2 and received a doctor's note, which covered his December 2 absence. That evening he went on to perform work with his brother, putting up a utility barn, because he could be paid cash. The claimant was subsequently discharged the following day due to his excessive absences.

## 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 § 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(1)a, (7) provide:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

(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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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. 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. In this case, the claimant had forty attendance infractions prior to the final incident, all which occurred within his first ten months of employment. The employer has credibly established that claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The claimant was told that he must produce documentation to support any further absences after his warning on November 20, 2014, or they would be considered unexcused and result in termination.

The employer was reasonable in allowing the claimant to remain employed after forty attendance incidents. The claimant was aware his job was in jeopardy. It is troubling the claimant told his employer that he was too ill to perform work on December 2 and then performed heavy duty construction work later that day because he could be paid cash. The administrative law judge is not persuaded that the claimant's final absence was avoidable due to illness when the claimant delayed visiting a doctor and then performed manual labor for his brother. Even if the claimant's absence on December 2 was considered excused as a result of his visit to a doctor, his absence on December 1 was not supported by documentation, and therefore, is unexcused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The January 22, 2015 (reference 01) unemployment insurance 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.

---

Jennifer L. Coe  
Administrative Law Judge

---

Decision Dated and Mailed

jlc/can