

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID LASHLEY**  
Claimant

**APPEAL NO: 13A-UI-12640-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 10/13/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 4, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 5, 2013. The claimant participated in the hearing. Kristi Fox, Human Resource Clerk 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 production worker for Tyson Fresh Meats from October 22, 2012 to October 12, 2013. He was discharged from employment due to a final incident of absenteeism that occurred on October 9, 2013, that placed him over the allowed number of attendance points.

The employer utilizes a no-fault attendance policy and employees are terminated upon reaching ten attendance points. Employees are assessed one point for each excused absence which requires they call the employer in a timely manner and three points for each unexcused absence which they call the employer in an untimely manner or fail to call at all.

The attendance policy also states that employees will receive a written warning upon reaching three, six and nine points, respectively. Once an employee reaches ten points it is the decision of the supervisor and the claimant to prove good cause to have a point or points removed. The employer acknowledges some supervisors are more lenient than others. Doctor's excuses do not prevent an employee from receiving points.

On November 26, 2012, the claimant was absent due to properly reported illness and received one point; on December 10, 2012 and January 3, 2013, he was absent for personal business

and received one point for each day; on January 29, 2013, he was absent because he did not have transportation and received one point; on February 4 and April 25, 2013, he was absent due to properly reported illness and received one point for each day; on June 3, 2013, he was absent because he did not have childcare and received one point; on June 17, 2013, he was absent because he did not have transportation and received one point; on July 11, 2013, he was absent because he did not have childcare and received one point; on September 19, 2013, he was absent because he did not have transportation and received one point; and on September 27, 2013, he was absent due to properly reported illness and received one point.

On October 7, 2013, the claimant reported for work but was experiencing pain in his neck and shoulder. He told his supervisor about the problem and was told if he was in that much pain he should go to the hospital. The claimant left work and went to the hospital and received a note excusing him from work October 8 and 9, 2013. He took the note to the employer before going home. The claimant called in to report his absence due to his neck and shoulder injury October 8, 2013, but failed to call in October 9, 2013, and the employer terminated his employment for exceeding the allowed number of attendance points.

The claimant never received a warning about his attendance as required by the employer's policy.

#### **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).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional.

Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused in nearly every situation. In this case, six of the claimant's fourteen total absences were due to properly reported illness. The seventh and last absence, due to illness, while not properly reported, was covered by a medical excuse. The claimant was on medication and in bed and failed to call the employer, which, without the doctor's note, would obviously be considered a no-call/no-show absence. However, the employer was on notice the claimant would not be in that day, even without his calling to report his absence, because it was in receipt of his medical excuse. Additionally, the employer had no evidence the claimant was ever warned about his attendance, which violated the employer's policy.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

**DECISION:**

The November 4, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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