

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE HARNDEN
Claimant

APPEAL NO. 07A-UI-00631-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

**OC: 12-24-06 R: 03
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 January 17, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 1, 2007. The claimant participated in the hearing. Kevin Vanasten, General Manager, 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 sorter for Millard Refrigerated Services from February 20, 2006 to December 23, 2006. The employer's policy states that four unexcused tardes or leaving early counts as one unexcused absence. The claimant left early April 13, 2006, because he was ill and his supervisor sent him home; he was absent April 27 and was a no-call, no-show April 28, 2006, because he was in jail; he left early August 9, 2006, because he was ill and his supervisor sent him home; he was a no-call, no-show September 28, 2006, because he overslept; he left early November 25, 2006, because he was ill and his supervisor sent him home; and he was 11 minutes late December 23, 2006, because he overslept. On April 29, 2006, the claimant received a written warning and suspension because of the no-call, no-show absence and was told at that time another unexcused absence or suspension could result in termination of employment. On September 29, 2006, he received a written warning and suspension because of the no-call, no-show absence September 28, 2006, when he overslept. The claimant signed both warnings and did not enter any remarks in the comment section.

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:

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). The employer's policy punishing employees sent home by their supervisor for being ill does not seem fair and, consequently, the administrative law judge is not going to consider those absences in the analysis of whether the claimant's attendance constitutes disqualifying job misconduct. That leaves the April 27 and 28, 2006, no-call, no-show absences because the claimant was in jail; the September 28, 2006, no-call, no-show absence because he overslept; and the December 23, 2006, incident of tardiness because he overslept. 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 during his 10 month employment, is considered excessive. Benefits are denied.

DECISION:

The January 17, 2007, reference 01, 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/kjw