

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

JAMES ROBBINS  
507 NE 1<sup>ST</sup> ST N  
MORNING SUN IA 52649

TEAM STAFFING SOLUTIONS INC  
116 HARRISON ST  
MUSCATINE IA 52761

Appeal Number: 06A-UI-00648-H2T  
OC: 12-04-05 R: 04  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism  
Iowa Code §96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 12, 2006, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on February 2, 2006. The claimant did participate. The employer did participate through Bill Ramsey, Claims Specialist and Kirby Cooper, Account Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned at Precision Bend in Walcott, Iowa from November 14, 2005, to until

November 28, 2005 when he called in to say he would not be to work because his truck was not working and because he had a fight with his wife and was feeling depressed. The claimant had been tardy to work on November 17, November 18 and had left work early on November 21. The claimant did not know the claimant was tardy because the client he was assigned to work for did not tell them. The claimant was never warned that his job was in jeopardy due to attendance issues.

The claimant did not work from December 28 through January 2 because he was in jail.

The claimant was offered a job to start on December 1 at Miller container corporation which he accepted. The claimant did not show up for the orientation session on December because he had a court date.

On December 8, the claimant was offered work in a warehouse, which he did not accept because he knew he had to serve a jail sentence and would only be able to work for a short time.

On December 10, the claimant was offered a general production work job at PSC Fabricating which he accepted and then failed to appear for again because he was at the courthouse and had to serve a jail sentence in the future.

On December 13, the claimant was offered production work at Heinz which he declined in light of his upcoming jail sentence that he had to serve.

The employer's representative told the claimant it would be best for him to complete his jail sentence and then to return to them and let them know he was available for work again.

The claimant began working on January 12, 2006 at West Liberty Foods as a machine operator where he continues through date of hearing.

While the employer made an offer of work to claimant on December 8, 10 and 13, the claimant knew he was going to have to serve a jail sentence and would not be able to complete any of the assignments. The claimant was told by the temporary agency to apply for work again with them after he had completed his jail sentence.

#### 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).

A failure to report to work without notification or good reason is considered an unexcused absence. One unexcused absence without prior warning or a history of other absences is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Because the claimant was unable to know when his jail sentence would begin, and because he was told to reapply only after completing the jail sentence he did not refuse any suitable offer of work. Benefits are allowed.

DECISION:

The January 12, 2006, reference 04, decision is reversed. The claimant was discharged from employment for no disqualifying reason. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

tkh/pjs