

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE LEPPERT
Claimant

APPEAL NO: 08A-UI-09714-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOWDING INDUSTRIES OF IOWA LLC
Employer

**OC: 09-14-08 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 October 16, 2008, 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 November 5, 2008. The claimant participated in the hearing. Larry Becker, Plant 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 welder for Dowding Industries of Iowa from May 20, 2008 to September 12, 2008. The employer's policy requires that employees call before the start of their shift. If the receptionist is not on duty yet they can leave a voice mail which the receptionist documents when she arrives and sends to the plant manager. The claimant was a no-call no-show July 24, 2008. On August 4, 2008, he called and stated he would not be in because his father had been injured. On August 8, 2008, he called and stated he needed to take his father to a medical appointment in Nebraska. He was a no-call no-show August 18, 2008, and received a verbal warning and was told he must call in if he was not going to be at work. He was a no-call no-show August 26, 2008, and received a one-day suspension. He was a no-call no-show September 9 and September 10, 2008, and was sent home when he reported for work September 11, 2008. The employer terminated his employment September 12, 2008. The claimant said his father had been ill and he had "a lot going on." The employer's policy states that three no-call no-shows will result in termination of employment. The employer was happy with the claimant's performance but terminated his employment due to the five no-call no-shows in July, August and September 2008. There is no evidence that these absences were related to the illness of the claimant. The claimant testified he does not recall the reasons for some of his no-call no-shows but that he was absent without calling August 18, 2008, because his father fell off a roof and he went to the hospital with him and did not have phone service or the employer's phone number. He does not know why he did not call August 26, 2008, but testified his father

had surgery September 9 and he was absent that day and September 10, 2008, for that reason. He knew his job was in jeopardy but did not inform the employer of the reasons for his absences until September 12, 2008. The employer testified his absences would have been excused if he had simply called in and reported he was going to be gone.

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). While the claimant had some good cause personal reasons for his absences, he does not have good cause for failing to call the employer and report those absences. The employer has established that the claimant was warned that further unexcused, no-call no-show 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, is considered excessive. Consequently, benefits must be denied.

DECISION:

The October 16, 2008, 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/pjs