

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MCARTHER N GUNN**  
Claimant

**EXPRESS SERVICES INC**  
Employer

**APPEAL 15A-UI-00022-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/30/14  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 23, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2015. Claimant participated.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at Logistics as a fork truck operator from July 20, 2013 through July 16, 2014 when he was discharged from both the assignment at Logistics and from Express Services due to poor attendance. The policy is that once an employee misses seven days they are discharged. The claimant missed work in April 2014 when he was hospitalized for internal bleeding. He missed approximately one week or five days at that time. He also missed two days earlier when he was becoming ill but prior to going to the hospital. The claimant last missed work on July 16 when he overslept.

**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 § 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(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 reported absence related to **illness or injury is excused** for the purpose of the Iowa Employment Security Act. All but one of the claimant's absences was due to illness. Those absences are considered excused for the purposes of unemployment insurance benefits. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Benefits are allowed.

#### **DECISION:**

The December 23, 2014, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs