

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

STEVEN T PAINTER  
3507 SCOTT DR  
COUNCIL BLUFFS IA 51501

AIRLITE PLASTICS  
BOX 19100  
OMAHA NE 68119

Appeal Number: 04A-UI-03990-LT  
OC 03-14-04 R 01  
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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 2, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 28, 2004. Claimant did participate. Employer did participate through Brenda Blake. Employer's Exhibits One through Three were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time packer through March 9, 2004 when he was discharged. Claimant was a no-call/no-show on March 5. His grandmother had been diagnosed with cancer and he

needed to relocate her to Omaha. Employer offered the full week and claimant said he would be back to work on Friday. Employer has a no-fault attendance policy. He had a medical excuse for an absence from January 22 through 30, 2004. He recalls calling in sick on February 9, 2004 but employer has no record of the reason for the absence. On March 5, claimant maintains he called at 7:30 p.m. to the main number, or 341-7300, Ext. 305, and left an answering machine message that he had to go to Lincoln because of his grandmother's complications (allergic reaction to medication), he had to leave and would not be at work that night. He had told employer that he may have gotten busy with his grandmother's situation and forgotten to call.

#### 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).

The reported absences related to illness are all excused for the purpose of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because employer carries the burden of proof, the absence on February 9 is considered excused, as claimant believed it to be related to illness, but employer had no information to rebut that recollection. A failure to report to work without notification to the employer is generally considered an unexcused absence. Employer's testimony that claimant failed to call on March 5 is credible, given the exhaustive investigation about whether claimant reached anyone's voice mail. However, one unexcused absence without a history of other unexcused absences is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The April 2, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/b