

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA EATON**  
Claimant

**APPEAL NO: 08O-UI-08844-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENVIRONMENTAL MANAGEMENT SVCS**  
Employer

**OC: 07-06-08 R: 04  
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 August 6, 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 October 14, 2008. The claimant participated in the hearing. Mark Hogan, President, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**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 asbestos removal worker for Environment Management Services from March 28, 2007 to June 20, 2008. He was discharged from employment due to excessive unexcused absenteeism. The claimant was absent for reasons neither he nor the employer could provide on February 11, 12, 13, 14, 15, 18,19, 20, 21, 22, 26, 27, 28, 29, March 3, 4, 5, 6, May 6, 7, 8, 9, 12, 13, 14, 15, 16, 20, 21, 22, 23, 27, 28, 29, 30, June 3, 4, 5, 6, 10, 11, 12, 13, 17, 18, and 19, 2008. He was a no-call no-show January 15, 2008; May 19; May 26 and June 16, 2008. He called in late June 2 and June 9, 2008 and was absent due to illness April 14 and April 25, 2008. The claimant testified his absences were due to illness and stress. The employer terminated his employment June 20, 2008, for excessive unexcused absenteeism.

**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 claimant was absent 52 days during 2008, not counting sick and vacation days. If he was ill he only reported two absences to the employer but did not provide a reason for the other 52 absences. The employer has established that the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

**DECISION:**

The August 6, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs