

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

TOU THONGKHAM
APT #8
1414 E WALNUT ST
DES MOINES IA 50316

PELLA CORPORATION
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-01201-H2T
OC: 12-18-05 R: 02
Claimant: Respondent (1)

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 24, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 8, 2006. The claimant did participate through the interpretation of Tom Baccam. The employer did participate through Aaron Bohn, Department Manager, and Tiffany Weaver, Human Resources Representative, and was represented by Rick Carter of Sheakley Uniservice. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a factory flex worker full time beginning June 1, 2004, through October 13, 2005, when he was discharged.

The claimant received a third corrective action letter within a twelve-month period resulting in his discharge. The claimant did not report for a scheduled overtime shift on October 7, 2005, nor did he call in to report his absence. The claimant was a no-call/no-show for work that day. The claimant knew he was to work on October 7, 2005, but he did not report, because his car was not working. The claimant did not call in to report his absence because he lost the correct phone number to call the employer. The claimant could have called the main switchboard number. The claimant had no prior warning regarding any specific attendance issues.

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. When considering past acts and warnings to determine the magnitude of a current act of misconduct pursuant to 871 IAC 24.32(8), the earlier misconduct must relate to the final act that resulted in the termination in order to establish a pattern of conduct. See, Flesher v. IDJS, 372 N.W.2d 230, 234 (Iowa 1985). The claimant's earlier disciplinary events had nothing to do with attendance at work. The claimant had never before been warned about his attendance at work.

The term "absenteeism" 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 to the employer 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. An employer's no-fault attendance policy is not dispositive of the issue of entitlement to unemployment insurance benefits. Benefits are allowed.

DECISION:

The January 24, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjw