

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICHOLAS J MARY
Claimant

STELLAR INDUSTRIES INC
Employer

APPEAL 15A-UI-07753-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 26, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 4, 2015. The claimant participated personally. The employer participated through Pam Jones, human resources generalist. Employer Exhibits 1 through 4 were admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a welder and was separated from employment on June 4, 2015, when he was discharged for excessive unexcused absenteeism (Employer Exhibit 2).

The employer's attendance policy issues disciplinary action based on unexcused absences. Unexcused absences are those which do not have proper notification in advance of the absence, regardless if an employee has vacation or personal time to cover the hours worked and be paid. During 2015, the claimant had 73 hours of unexcused time off between thirteen occurrences (Employer Exhibit 1-A). Prior to separation, the claimant was issued a suspension on May 8, 2015, for his attendance. The warning explicitly stated, "...any future unscheduled absences will be unexcused and result in termination. Your job is in jeopardy" (Employer Exhibit 3). The claimant also received written warnings related to his attendance on April 28, 2015, March 11, 2015, August 11, 2014, October 28, 2013, July 19, 2013 and August 29, 2012 (Employer Exhibit 3, 3-A, 3-B).

The final incident occurred when the claimant went home for his lunch on June 2, 2015. The claimant was in his garage and a birdhouse fell and hit him on the head. As a result, the claimant sustained a bleeding wound. The claimant felt too ill to return to work and called his team leader, who advised him to bring a doctor's note if he was going to miss work. The

claimant did not return to work that day and did not go to a doctor because he got the bleeding to stop himself. On June 4, 2015, the claimant was subsequently discharged for his excessive unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The claimant knew his job was in jeopardy when he was suspended just two weeks before his separation (Employer Exhibit 3), and in 2015 alone, had 13 attendance incidents representing 73 hours of unexcused absences (Employer Exhibit 1.) If the claimant was injured to the point he believed he could not perform work, and knew his job was in jeopardy, medical care would have been appropriate under the circumstances. Further, the employer advised the claimant when he was calling in that if he did not return, to bring a doctor's note to cover the absence.

The claimant neither returned to work nor sought medical care. The employer has credibly established that claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 26, 2015, (reference 01) unemployment insurance 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs