

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS ALDRIDGE**  
Claimant

**APPEAL NO: 07A-UI-09628-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYSCO FOOD SERVICES OF IOWA INC**  
Employer

**OC: 09-09-07 R: 02  
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 October 4, 2007, 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 November 26, 2007. The claimant participated in the hearing. Dorothy Goodman, Vice-President of Human Resources; Bob Beiner, Director of Transportation; Brian Adams, Transportation Supervisor; and Ron Dillon, Vice-President of Operations, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were 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 delivery driver for Sysco Food Services of Iowa from January 13, 2006 to September 6, 2007. The employer uses a no-fault attendance policy and assesses one point for each occurrence and one-half point for an incident of tardiness or leaving early. If an employee "extends his weekend" by missing the day before or after his two days off three times in one year he receives two additional points. As of August 16, 2007, the claimant had four occurrences. On August 16, 2007, the Human Resources office conducted one of its twice yearly driver's license checks on its employees who are required to have a valid driver's license for work and the report indicated the claimant's license was suspended. Bob Beiner, Director of Transportation, contacted the claimant at home and told him his license was suspended and he needed to go to the Department of Transportation and resolve the situation. The claimant called later that day and said the unpaid fine was taken care of but it would take 24 hours to clear and he would be ready to drive August 18, 2007. On August 17, 2007, the claimant called and said he needed to take a personal holiday August 18, 2007, because he was not able to drive yet and the employer granted his request but assessed him one attendance point for August 17, 2007. On August 20, 2007, Mr. Beiner called the claimant to inquire about his driving status and the claimant said it was taking longer than expected and

asked for the week of August 20, 2007, off for vacation and the employer granted his request and told him to bring a copy of his CDL when he returned. On August 23, 2007, the employer ran a driver's license check on the claimant in anticipation of his return August 28, 2007, but his license was still suspended and there was no change in his driving status. The claimant stated he was involved in a domestic situation and could not work August 28, 2007, and the employer assessed him one attendance point and added an additional two points because it was the third time in the year he had extended his weekend by missing a day before or after. On August 28, 2007, Mr. Beiner left a message for the claimant asking if he could work August 29, 2007, and the claimant left a return message stating he still did not have a valid license. On August 29, 2007, Transportation Supervisor Brian Adams called the claimant to ask if he could drive August 31, 2007, and the claimant said a warrant had been issued for his arrest and personal problems prevented him from getting his license. On August 30, 2007, Mr. Adams left the claimant another message and the claimant called back and said he was going to turn himself in to the police and would bring his new license in on September 1, 2007. On August 31, 2007, the claimant called to notify the employer he was out of jail and he had his license and after reviewing the claimant's attendance points the employer suspended him pending further investigation and terminated his employment September 6, 2007, for violating the attendance policy. The employer did not issue the usual warnings to the claimant because he was not at work between August 16, 2007 and August 31, 2007.

#### **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's absences were due to the fact his driver's license was suspended and because he was experiencing personal problems and was in jail a day or two. As a delivery driver he was required to have a valid driver's license. While the Department of Revenue intercepted his

original payment to the DOT to cover what he owed on another matter, that does not absolve the claimant from the responsibility to pay the fine assessed to get his license back. The other days missed were due to his personal problems and one of those absences extended his weekend for three days and he received two additional points. Those absences cannot be considered excused because they were due to issues of personal responsibility. The remaining question is the employer's failure to issue the usual progressive disciplinary warnings per its policy. While generally the employer issues the warnings simultaneously with the absences, it was unable to do so in this case because the claimant's last absence occurred August 16, 2007, and the employer continued to expect the claimant to show up the following day so it could give him the warnings as they accumulated but he failed to do so. Consequently, the employer did not have the opportunity to give the claimant the warnings and the claimant cannot be expected to be rewarded by not receiving warnings and therefore not being discharged because he was absent for personal reasons on the days he would have received the warnings. The employer has established that the final absences were not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

**DECISION:**

The October 4, 2007, 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