

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT L. BOPP**  
Claimant

**APPEAL NO: 17A-UI-08064-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRES-CO SYSTEM USA INC**  
Employer

**OC: 07/23/17**  
**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 7, 2017, 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 August 28, 2017. The claimant participated in the hearing. Cynthia Farmer, Human Resources Manager and Don Romig, Operations Manager, participated in the hearing on behalf of the employer.

**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 material handler for Fres-Co System USA from October 24, 2016 to May 26, 2017. He was discharged from employment due to a final incident of absenteeism that occurred on May 25, 2017.

The employer's attendance policy is a step-based policy and employees begin receiving steps after they exhaust their personal time. The first step is a verbal warning in writing when the employee is out of personal time; the second step is a written counseling when the employee exceeds his allotted time; the third step is a written warning for a second occurrence; the fourth step is a suspension for the third occurrence; the fifth step is a performance improvement plan for the fourth occurrence; and the sixth step is termination for the fifth occurrence. If an employee is absent with a doctor's note for consecutive days the absence is assessed one point.

The claimant was absent January 11, 12, 13 and 16, 2017, and provided the employer with a doctor's note and received one occurrence; he was absent February 21, 2017, and received one occurrence; he was absent March 9 and 10, 2017, and received two occurrences; he was a no-call/no-show May 1, 2017, and received one occurrence; he was absent May 2 through May 5, 2017, and provided a doctor's note excusing him from work and stating he could return

to work May 8, 2017, and received one occurrence; he was absent May 8 through May 10, 2017, and did not provide a doctor's note and received three occurrences; he was absent May 15, 2017, because of transportation issues and received one occurrence; and he was absent May 16 through May 26, 2017, and did not provide the employer with a doctor's note until after the termination. That note excused the claimant May 15 through May 23, 2017, and released him to return to work without restrictions May 24, 2017.

The employer reviews new employee's performance after 30, 60, 90 and 120 days. The claimant's January 23, 2017, 90 Day Appraisal and his April 25, 2017, 120 Day Appraisal both indicated he needed to improve his attendance. The claimant received a verbal counseling January 23, 2017, because he had used all of his personal time and he received a written counseling May 8, 2017, for his first occurrence after being out of personal time.

The employer tried to contact the claimant May 21, 2017, but could not reach him and he did not return its call. After the employer tallied the claimant's occurrences, it terminated his employment May 26, 2017.

### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 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 employer denies receiving the claimant's doctor's note excusing him from work May 15 through May 19, 2017 and May 22 and 23, 2017. Even if the administrative law judge finds the claimant did provide a doctor's note to the employer May 26, 2017, he still exceeded the allowed number of attendance occurrences excluding his medically excused absences. The

claimant ran out of personal time and received a verbal counseling January 23, 2017. He received a written counseling May 8, 2017, for accumulating his first occurrence without personal time. He received a second occurrence May 9; a third occurrence May 10, 2017; a fourth occurrence May 15; and a fifth and sixth occurrence May 24 and May 25, 2017. The employer's attendance policy only allows five occurrences after an employee exhausts his personal time before termination occurs. With the exception of May 15, 2017, the claimant did not have doctor's notes excusing these absences. Although his last doctor's note excused him from May 15 through May 19, 2017, the claimant called the employer May 15, 2017, and stated he would not be in because of car problems, not because he was ill.

The employer did not issue every warning under its policy to the claimant prior to his termination. The claimant received his written counseling, the second of six steps, May 8, 2017. He was then absent all but May 11 and 12, 2017, before the termination occurred. His attendance, rather than any failure on the part of the employer, was the reason the claimant did not receive those warnings.

The employer has established that the claimant violated the attendance policy and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

**DECISION:**

The August 7, 2017, 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/scn