

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CRAIG L REED**  
Claimant

**TSI ENTERPRISES INC**  
Employer

**APPEAL 15A-UI-11476-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/20/15**  
**Claimant: Appellant (1)**

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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 October 13, 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 November 3, 2015. The claimant participated personally. The employer participated through Sarah Fiedler. Charity Stone, manager, also testified for the employer. Employer Exhibits 1 through 5 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 laborer on assignment at Grain Processing Corporation and was separated from employment on September 25, 2015, when he was discharged for excessive unexcused absenteeism (Employer Exhibit 2).

The employer's policy tracks attendance occurrences and requires employees to call off one hour prior to a shift. The claimant had multiple excused absences during his employment but also failed to call off properly shifts on April 1, 2014, and September 14, 2015. The claimant was tardy to his shifts on January 23, 2015, and August 18, 2015. Prior to discharge, the claimant was issued a verbal warning on April 24, 2014 (Exhibit 5), and issued a written warning on September 12, 2014 (Exhibit 4). The claimant was also issued a written warning and suspension on April 27, 2015 (Exhibit 3). On September 18, 2015, the claimant's on site manager, Kelly Swan, informed the claimant that he would face discharge for any future attendance matters.

The final incident occurred on September 21, 2015, when the claimant missed a mandatory safety meeting, which had been scheduled approximately four weeks prior. The claimant missed the meeting due to a lack of childcare, and did not call the employer prior to the meeting, as required by the employer. He was subsequently discharged.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 on multiple occasions called off late (April 10, 2014, January 23, 2015, and September 14, 2015). The claimant was issued warnings on April 24, 2014, September 12, 2014 (Employer Exhibit 4) and a suspension on April 27, 2015 (Employer Exhibit 3). The claimant was also verbally counseled by his onsite manager, Kelly Swan, on September 18, 2015, that his job was in jeopardy and future occurrences would result in discharge.

The final incident occurred on September 21, 2015, when he no-call/no-showed to a mandatory safety meeting, due to a lack of childcare. The claimant had four weeks’ notice to make arrangements to attend. 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 October 13, 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.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

jlc/pjs