

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MARK JONES**  
Claimant

**STANLEY ROOFING LLC**  
Employer

**APPEAL NO. 16A-UI-00933-JE**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/13/15  
Claimant: Appellant (1)**

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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 January 14, 2016, reference 02, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 15, 2016. The claimant participated in the hearing. Terry Marter, Owner, participated in the hearing in person and Eric Marter, Field Supervisor, participated in the hearing on the phone on behalf of the employer. Employer's Exhibits Three 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 roofer for Stanley Roofing from June 18, 2012 to November 21, 2015. He was discharged from employment due to a final incident of absenteeism that occurred November 18, 2015.

The employer's attendance policy states that an employee must call and report his absence every day. If an employee is absent due to illness three or more days he must bring a doctor's excuse. The policy also states that if an employee is absent for two consecutive workdays and does not properly report his absence to the employer he may be assumed to have abandoned his job. The claimant signed an acknowledgment indicating he read and understood the policies June 25, 2013 (Employer's Exhibit Three).

The claimant was a no-call no-show August 25, August 28, September 15, September 16, September 21, September 30, October 27, October 28, October 29, October 30, November 2, November 3, November 4, November 5, November 6, November 13, and November 18, 2015 (Employer's Exhibits One and Two). The employer usually attempted to call the claimant on the days he failed to call or show up for work but the claimant did not answer or return the employer's calls. On one occasion in September 2015 the claimant said his arm hurt and the

employer asked him how he injured his arm. The claimant replied “Years of abuse.” The employer inquired about whether it was a work-related injury but the claimant stated it was not. The claimant reported for work the following day and said his arm was fine. The employer told him he could not work unless he really was not injured and the claimant assured him that he was fine. At one time the claimant saw a chiropractor and the employer asked him for a doctor’s note. The claimant said he would check and then called the employer back and said the doctor was too busy to see him about a note and he could not get in for one month. After the October 27 through October 30, 2015 absences the employer asked the claimant why he was not coming to work and would not answer his phone and the claimant stated he had “too much going on at home” and “a lot of stress at home.”

After the November 13 and November 18, 2015, no-call no-show absences the employer terminated the claimant’s employment due to excessive, unexcused absenteeism.

### **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 § 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 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 had 17 no-call no-show absences between August 25 and November 18, 2015. Even if he were ill, which is not supported by the evidence, he still needed to call the employer every day to report his absences and provide a doctor’s note for any absence of three or more days, both of which he failed to do. Additionally, when the employer called him he did not answer the phone the employer provided him or return its calls. Instead, when the employer questioned him about his absences he attributed them to “stress at home.”

It is simply common sense that if an employee is unable to go to work, for whatever reason, he call the employer to report his absence, unless he has a good cause reason for failing to do so, such as incapacitation. The employer is entitled to know if an employee will not be at work so it may plan its daily activities and assign work.

The claimant's final absence November 18, 2015, in combination with his history of absenteeism, is considered excessive. Therefore, benefits must be denied.

**DECISION:**

The January 14, 2016, reference 02, 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