

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS R. SIEVERS
Claimant

APPEAL NO: 17A-UI-07935-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERNATIONAL PAPER COMPANY
Employer

OC: 07/02/17
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 July 25, 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 24, 2017. The claimant participated in the hearing. Dyanna Davidson, Environmental, Health and Safety Coordinator/Human Resources Assistant; Don Vanourney, Shipping Supervisor; and Joe McGovern, Site 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 shipping clerk for International Paper Company from May 15, 2007 to June 29, 2017. He was discharged from employment due to a final incident of absenteeism that occurred June 21, 2017.

The employer's attendance policy starts all employees with zero points. If an employee is absent and properly reports his absence one point is deducted; if he properly reports his absence and has a doctor's note one-half point is deducted; if he is tardy for more than half of his shift, one point is deducted; if he is tardy for less than half his shift, one-half point is deducted. If an employee is a no-call/no-show and violates the employer's Duty to Call policy two points are deducted. If he has perfect attendance for one calendar month he receives one point back up to nine points.

The claimant had 4.50 points as of March 31, 2017. On April 7, 2017, he properly reported his absence and one point was deducted for a total of minus 5.50 points; on April 10 through April 12, 2017, he properly reported his absences and provided a doctor's note and received one-half point for a total of minus 6.00 points; on April 24 through April 26, 2017, he properly reported his absences and provided a doctor's note and received one-half point for a total of

minus 6.50 points; on June 1, 2017, he received a one point credit for perfect attendance in May 2017, for a total of minus 5.50 points; on June 12, 2017, he properly reported his absence but did not have a doctor's excuse and received one point for a total of minus 6.50 points; and on June 21, 2017, he was a no-call/no-show and received two points for a total of minus 8.50 points. Shipping Supervisor, Don Vanourney texted the claimant at 8:43 a.m., June 21, 2017, and the claimant called him back at 10:49 a.m. Mr. Vanourney asked him, "what was up with (his) attendance" and the claimant stated, "Nothing." Mr. Vanourney asked the claimant several times if he needed anything and the claimant said no. Mr. Vanourney asked the claimant if he wanted to call back later and the claimant said, "I screwed up." Mr. Vanourney repeatedly asked the claimant if there was anything he could do to help and the claimant stated, "No one would believe (him)" and he was "tired of talking to the wrong people." Mr. Vanourney did not know what the claimant was referring to but believed he meant his co-workers. When Mr. Vanourney asked the claimant again if he wanted to call back later the claimant hung up on him. The claimant testified he was too ill to call the employer June 21, 2017, and did not have his girlfriend, who was also an employee of the employer, call in for him because employees were supposed to call themselves. The employer had accepted calls from the claimant's girlfriend on at least two other occasions. The claimant did not tell Mr. Vanourney he was ill or that he was too ill to call the employer and report his absence.

The claimant received a written warning for attendance April 5, 2017, upon reaching minus four attendance points; he received a final written warning for attendance April 13, 2017, for reaching minus six attendance points; he gained one point June 1, 2017, for perfect attendance in May 2017, for a total of minus five attendance points; and he received another final written warning June 14, 2017, for reaching minus six attendance points.

The employer suspended the claimant June 21, 2017, pending investigation so it could confirm that his points were correct. When it concluded the claimant's points were correct the employer terminated his employment June 29, 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 claimant did not tell Mr. Vanourney he was too ill to call in and report his absence June 21, 2017, when Mr. Vanourney called to ask him about his absence. In fact, when Mr. Vanourney asked him what was going on the claimant stated, “Nothing.” The claimant knew he had minus 6.50 attendance points and a no-call/no-show would put him at minus 8.50 points when termination occurs at minus 7.00 points. Despite that knowledge, however, the claimant failed to ask his girlfriend to call the employer for him. While the claimant argued employees are supposed to call in themselves, the employer had accepted calls from his girlfriend previously and given that he had minus 6.50 points he knew or should have known he did not have anything to lose by at least having his girlfriend call in and attempt to report his absence. Additionally, when Mr. Vanourney spoke to the claimant by phone the claimant said, “I screwed up.” It is not logical to believe the claimant would say “I screwed up” because he was too sick to call the employer. It is much more likely the claimant made that statement because he was able to call but failed to do so.

The employer has established that the 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 the claimant’s history of absenteeism, is considered excessive. Therefore, benefits are denied.

DECISION:

The July 25, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn