

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DARRIAN D JEFFERSON**  
Claimant

**ALPLA INC**  
Employer

**APPEAL 15A-UI-09640-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/12/15**  
**Claimant: Appellant (2)**

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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 August 19, 2015, (reference 03) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2015. Claimant participated. Employer participated through human resource manager Bill Lehner.

**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: Claimant was employed full time as a permanent machine operator from June 14, 2015, and was separated from employment on July 8, 2015, when he was discharged. His last day of work was July 6, 2015. On July 2 he was returning to Iowa City from a legal appointment in Cedar Rapids and notified his supervisor that his ride's car was overheating and he would be there around 8 p.m. He then called twice later because he was unable to arrange transportation for the rest of the shift but the call went to voice mail and he did not leave a message. The employer's policy provides that two attendance points during the probationary period of 90 days may result in termination. The employer had not previously warned claimant his job was in jeopardy for any similar reasons.

Claimant had worked for the employer through temporary staffing firm Aerotek before he was hired by ALPLA. In May 2015, Lehner heard him out about why he missed several days of work due to being a single parent with two children, his father's death, and taking his children to stay with his mother for the summer, so gave him a second chance and told him attendance would be very important. He was not told his attendance history would carry over from the temporary assignment to the employment directly with ALPLA.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Excessive absences are not considered misconduct unless unexcused. The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. 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, supra*.

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work because of a transportation issue is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because he had no other absences during the period of employment, had no written warnings his job was in jeopardy due to attendance or that his attendance from his temporary assignment through another employer would count

against him, the employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

**DECISION:**

The August 19, 2015, (reference 03) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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