

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID L BALLENTINE**

Claimant

**APPEAL NO. 13A-UI-03017-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE AMERICAN BOTTLING COMPANY**

Employer

**OC: 02/10/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated March 8, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism on February 4, 2013, and benefits are denied. A hearing was held on April 10, 2013. The claimant did not participate. Brandon Kuhns, Vending Supervisor; Michelle Eggleston, HR Manager; and Rick Troncin, Regional Manager, participated for the employer. Employer Exhibit One (42 pages) was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant worked as a full-time vending machine technician from June 5, 2007 to February 1, 2013. The claimant received the employer attendance policy that provides for progressive discipline based on a 12-point termination system.

The employer issued claimant a November 2, 2012 written warning for accumulating 8 points of attendance violations that he signed for on November 5. The warning enumerated the attendance violations.

Claimant was absent from work on Monday February 4, 2013. The employer learned he had been incarcerated at the Polk County jail on February 3 and was there until his release on February 13. The employer sent claimant a certified termination letter on February 4 he was let go for accumulating 12 attendance points in violation of its policy.

Claimant failed to respond to the hearing notice.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

871 IAC 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 administrative law judge concludes employer established misconduct in the discharge of the claimant on February 4, 2013, for excessive "unexcused" absenteeism.

The employer November 2 warning advised claimant he was at 8 attendance points and nearing the 12-point threshold for termination. A claimant incarceration beginning February 4 is an unexcused period of absence that made him at 12 points and constitutes job disqualifying misconduct in light of the November warning.

**DECISION:**

The decision of the representative dated March 8, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on February 4, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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