

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MACKAL KIMBLE
Claimant

APPEAL NO: 13A-UI-02045-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

OC: 04/01/12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 21, 2013, reference 10, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 19, 2013. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Toni Babcock, Human Resources Manager; John Halvorson, Operations Manager; and Matt Beeman, Supervisor; 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 collector for The CBE Group from May 7, 2012 to December 21, 2012. He was discharged from employment due to a final incident of absenteeism that occurred on December 21, 2012.

The claimant received a coaching September 4, 2012, for failing to document a telephone call he made to an account. He received a verbal warning September 27, 2012, for again failing to document a call he made to an account. On October 15, 2012, he received a verbal warning for failing to call the employer and report he would be tardy October 13, 2012. He was scheduled to start his shift at 7:00 a.m. and did not arrive until 7:32 a.m. The employer reviewed the proper call in procedure with the claimant. On October 17, 2012, he received a written warning for an improper call in because he did not call the employer to report he would be tardy October 16, 2012. He was scheduled at 7:00 a.m. and arrived at 7:57 a.m. On November 29, 2012, the claimant received a written warning for improper documentation of an account after he spoke to a consumer for seven minutes and 11 seconds and did not record any information on the account. The claimant's employment was terminated December 21, 2012, because he was

scheduled at 7:00 a.m. and did not arrive until 8:37 a.m. and did not call the employer to report he would be tardy. There is no evidence that these absences were related to illness.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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:

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 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 employer's progressive disciplinary action policy states that if an employee receives three written warnings in six months he will face termination of his employment. The claimant received a verbal warning October 15, 2012, for failing to properly report an incident of tardiness 32 minutes in duration and was retrained on proper call-in procedure but was 57 minutes tardy October 16, 2012, without calling the employer to report he would be late. There does not appear to be any excuse for the claimant's failure to properly call in and report his absence, especially given he received a verbal warning for the same behavior just the day before. He was one hour and 37 minutes tardy December 21, 2012, and again failed to call the employer to notify he would be late. The employer allows employees two incidents per month where they can make up the time they are late and the claimant had already used those. Additionally, the claimant received a coaching, a verbal warning and a written warning for failing to properly document information he received when speaking to consumers. The claimant's tenure with the employer lasted approximately seven months. Six disciplinary actions within that timeframe is unacceptable. 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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The February 21, 2013, reference 10, decision is reversed. 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

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