

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELVERT A WISE**

Claimant

**APPEAL NO. 09A-UI-10139-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE CBE GROUP INC**

Employer

**OC: 06/07/09**

**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Elvert Wise filed an appeal from a representative's decision dated July 6, 2009, reference 01, which denied benefits based on his separation from The CBE Group, Inc. After due notice was issued, a hearing was held by telephone on July 31, 2009. The employer participated by A. J. Johnson, Manager; Misty Erdahl, Senior Manager; and Toni Babcock, Human Resources Supervisor. Mr. Wise participated personally but became disconnected from the hearing at approximately 9:19 a.m. The administrative law judge attempted to re-connect him but only received a recording. He did not contact the Appeals Bureau concerning his failure to participate in the remainder of the hearing. The hearing record closed at 9:23 a.m.

**ISSUE:**

At issue in this matter is whether Mr. Wise was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wise was employed by The CBE Group, Inc. from June 4, 2007 until June 4, 2009. The employer operates a debt collection business and Mr. Wise's job was to make partial payment arrangements with debtors. He was discharged because of his attendance. In making the decision to discharge, the employer only reviewed his attendance for the prior six months.

Mr. Wise was coached about his attendance on February 9, 2009. He was scheduled to be at work at 8:00 a.m. that day. He called to say he would be one hour late but did not arrive until 12:21 p.m. He received a verbal warning on May 18, 2009 because he was late. He called to say he would be one hour late but did not arrive until 10:50 a.m. He did not call back to extend his arrival time on either February 9 or May 18. The tardiness was due to car problems on both occasions. Mr. Wise received his first written warning on May 22, 2009 because there were four occasions on which his timecard had him clocking in but he had not yet swiped his identification badge to enter the building at the times reflected by the time clock. Mr. Wise could offer no explanation for the discrepancies.

Mr. Wise received a written warning on May 30, 2009 because he was absent without notice. He later told the employer that he was dealing with issues with his father and that it slipped his mind to call. The decision to discharge was based on Mr. Wise's tardiness of June 2, 2009. He called to report that he would not be in until 2:30 p.m. He did not arrive by 2:30 p.m. and did not call back to alter his arrival time. He arrived at work at 2:47 p.m. The employer's policies provide for discharge if an individual receives three written warnings within a six-month period. As a result of his warnings, Mr. Wise was discharged on June 4, 2009.

### **REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Mr. Wise's tardiness of February 9 and May 18 is unexcused as neither incident was properly reported. Although he called to report he would be late, he indicated he would only be one hour late on both occasions. However, he did not arrive until almost three or more hours after his start time. He did not make a second call to the employer on either occasion to change his planned arrival time. Moreover, both incidents were due to car trouble, which is not reasonable grounds for missing work. Absences caused by matters of purely personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Wise's absence of May 30 is unexcused as he did not call to report his intent to be absent.

Mr. Wise was clearly on notice after the warnings that his attendance was jeopardizing his continued employment. In spite of the warnings, he did not take steps to conform his behavior to the employer's expectations. He knew from the coaching of February 9 and the warning of May 18 that the employer expected him to call if he intended to be later than initially planned. He indicated he would be at work by 2:30 p.m. on June 2 but did not arrive until 2:47 p.m. There was no intervening call to report a change in arrival time. There was no evidence from Mr. Wise to establish that he could not have called the employer on June 2. Although his arrival time on June 2 was not substantially later than first reported, the fact remains that the employer was entitled to notice of his intentions. The tardiness of June 2 is unexcused as it was not properly reported.

Mr. Wise had four periods of unexcused absenteeism during a period of approximately four months. Three of the episodes were during the final three weeks of his employment. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. For the reasons cited herein, benefits are denied.

### **DECISION:**

The representative's decision dated July 6, 2009, reference 01, is hereby affirmed. Mr. Wise was discharged for misconduct in connection with his employment. Benefits are withheld until

he has worked in and been paid wages of insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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