

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY M MINNER**  
Claimant

**EASTERN IOWA COMMUNITY COLLEGE**  
Employer

**APPEAL 16A-UI-05622-SC-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 04/17/16**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jeffrey M. Minner filed an appeal from the May 9, 2016 (reference 01) unemployment insurance decision that denied benefits based upon the determination Eastern Iowa Community College (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on June 3, 2016. The claimant participated personally. The employer's witnesses did not answer when contacted at the phone number registered for the hearing and did not participate.

**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: The claimant was employed full time as a Custodian I beginning on January 23, 2013 and was separated from employment on April 12, 2016, when he was discharged. The claimant reported to Facilities Supervisor Mary Diercksen and the shift he worked started at 2:30 p.m.

On August 24, 2015, the employer updated its attendance policy and told employees they could no longer leave a voice message if they were going to be tardy or absent from work. They were required to speak with Diercksen over the phone or in-person to report their absences. The attendance policy also said that employees needed to call the supervisor a half hour before the start of their shift.

On September 11, 2015, the claimant was rendered unconscious by new medication.. Once he regained consciousness, he contacted the employer at 2:59 p.m. to report he would be late for work. The claimant received a warning about his conduct.

In January 2016, the claimant left a voice message in the morning for Diercksen to let her know that he was going to miss work and use one of his personal days. He made additional attempts to speak with her but she did not answer the phone. The claimant received a warning for leaving a voice message for Diercksen.

On April 8, 2016, the claimant had pneumonia. He went to see his doctor that morning. He knew Diercksen was in a meeting from 11:30 a.m. until 3:00 p.m. so he attempted to notify her of his absence at 11:00 a.m. She did not answer the phone and he did not leave a message because he did not want to get in trouble. He attempted to call her multiple times before the start of his shift at 2:30 p.m. Diercksen did not answer the phone until 2:45 p.m. She told him to bring in a doctor's note for his absence. On Tuesday, April 12, 2016, the claimant was discharged for failing to notify his supervisor of his absence on April 8, 2016 before the start of his shift.

### 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. Benefits are allowed.

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 the 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

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*. See also, *Gimbel v. Emp’t Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant’s late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep’t of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity.

An employer’s attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. The claimant attempted to notify the employer of his absence due to illness within the confines of its policy. He reasonably did everything he could to notify the employer and his absence is considered to be properly reported. Because his last absence was related to a properly reported illness, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The May 9, 2016 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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