

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRIE SMITH**  
Claimant

**APPEAL NO: 16A-UI-05515-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASTERBRAND CABINETS INC**  
Employer

**OC: 12/20/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 12, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 2, 2016. The claimant participated in the hearing. Stephanie Moseley, Senior Human Resources Generalist, 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 water spider for Masterbrand Cabinets from February 3, 2014 to April 13, 2016. She was discharged for violating the employer's attendance policy.

The employer's disciplinary policy states that if an employee accumulates three written warnings for any violation within a rolling calendar year she will be discharged. The employer's attendance policy is a point-based system. If an employee is one minute to one hour and 59 minutes tardy she receives one-half point; if she fails to call and notify the employer at least 30 minutes before the start of her shift she will be tardy she receives an additional one-half point. If the employee is more than two hours tardy she receives a one point and if that incident is not properly reported to the employer she receives an additional one-half point. If the employee fails to notify the employer of an absence she receives two points. Points drop off after one year. Four attendance points triggers disciplinary action beginning with a written warning.

The claimant was absent due to properly reported illness December 14, 2014 and a few consecutive days following that date but provided a doctor's excuse and was assessed one point. On May 29, 2015, the claimant was absent due to illness with a doctor's excuse but called 15 minutes prior to the beginning of her shift rather than the required 30 minutes and was

assessed one point. On July 20, 2015, the claimant was absent two consecutive days due to properly reported illness with a doctor's excuse but did not have any paid time off (PTO) left and was assessed one point for the two-day absence. On October 13, 2015, the claimant was absent for two days due to illness but called at 4:31 a.m. for her 5:30 a.m. shift, did not use PTO, and was assessed one point for the two-day absence. On April 12, 2016, the claimant was scheduled to work at 4:30 a.m. but forgot to set her alarm and overslept. She believes she called the employer to report that incident of tardiness but the employer has no record of her call. The claimant rushed to work, arriving at 5:29 a.m. She was assessed one-half point for tardiness and one-half point for failing to call the employer to report she would be absent for a total of four points.

The claimant received a written warning for substandard work September 23, 2015. The employer issued her a second written warning October 13, 2015 because she accumulated four attendance points. One point dropped off December 2, 2015, leaving her with three points prior to her April 12, 2016 absence. The employer terminated the claimant's employment April 13, 2016, for accumulating a total of four attendance points and receiving her third written warning within a rolling calendar year.

### **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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The standard in

attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant provided a doctor's excuse for each of her absences except the last one which occurred April 12, 2016, when she overslept. Despite the fact she did have doctor's excuses she was still assessed points for her absences due to properly reported illness December 2, 2014 and July 20, 2015. She received a point for calling 15 minutes before the start of her shift on May 29, 2015, rather than the required 30 minutes required, and she called one minute late for her October 13, 2015 absence and also received one point. One point dropped off in December 2015, leaving the claimant with three attendance points prior to her April 12, 2016 incident of tardiness.

The claimant accumulated three absences due to illness between May 29, 2015 and April 11, 2016. Those absences were accompanied by doctor's notes and are considered excused under Iowa law. Her final absence April 12, 2016, was not excused but that absence alone does not rise to the level of disqualifying job misconduct. Under these circumstances, the administrative law judge finds the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The May 12, 2016, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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