

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DYLAN D RANKIN**  
Claimant

**FOODLINER INC**  
Employer

**APPEAL 24A-UI-06491-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/09/24**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On July 16, 2024, claimant Dylan D. Rankin filed an appeal from the July 10, 2024 (reference 01) unemployment insurance decision that denied benefits, determining claimant was discharged from employment for excessive, unexcused absenteeism. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on July 19, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 8:00 a.m. on Thursday, August 1, 2024. Claimant Dylan D. Rankin personally participated. Employer Foodliner Inc. participated through Mitch Demmer, Terminal Manager; and Jonathan Taylor, Shop Foreman. Employer's Exhibits 1, 2, 3, 4, 5, 6, 8, 9, 10, and 11 were received and admitted into the record; Employer's Exhibit 7 was excluded from the record because it was duplicative. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether claimant was discharged from employment due to excessive, unexcused absenteeism.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Dylan Rankin began employment with Foodliner Inc. on October 2, 2023. He worked full-time hours for the company as a shop technician. Claimant worked Monday through Friday with a 7:30 a.m. start time. His employment ended on June 12, 2024, when the employer discharged him due to absenteeism.

His final absence was a late arrival on June 12, 2024. He texted Taylor, his supervisor, to report that his alarm had not gone off and he would be late to work. Claimant ultimately arrived at 8:17 a.m.

Claimant had seven prior late arrivals during 2024. He had previously arrived late due to vehicle issues on January 17, 2024; due to vehicle issues on February 13, 2024; due to an issue with his family on February 26, 2024; due to his alarm not going off on April 23, 2024; due to vehicle issues on May 2, 2024; due to family issues on May 31, 2024; and due to family issues on June 4, 2024.

Claimant was aware his job was in jeopardy due to his absenteeism. On June 5, 2024, the employer issued claimant a First and Final Written Reprimand for “failure to begin” and “excessive absenteeism.” (Exhibit 1) This document, authored by Demmer, told claimant that future absenteeism would result in further disciplinary action up to and including discharge. (Exhibit 1) Claimant knew that one more late arrival would lead to him being fired. (Claimant testimony) Demmer and Taylor had also previously warned claimant verbally.

The employer has an Employee Handbook that includes an attendance policy. (Exhibit 4) When claimant was hired, he signed a form acknowledging receipt of the Employee Handbook and agreeing to read the handbook and comply with its rules. (Exhibit 3) Claimant and all employees have access to the Employee Handbook through the online time clock.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to excessive, unexcused absenteeism.

Iowa Code section 96.5(2)(a) and (d)(9) provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, “*misconduct*” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or even design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Misconduct by an individual includes but is not limited to all of the following:

(9) Excessive unexcused tardiness or absenteeism.

The definition of misconduct included in section 96.5(d)(9) appears in identical form in the Iowa Administrative Code. Iowa Admin. Code r. 871-24.31(1)(a)(9). The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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); 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."

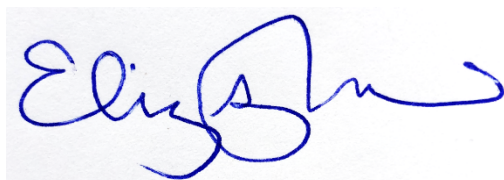
The requirements for a finding of misconduct based on absences are twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. 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.

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). When no excuse is given for an absence at the time of the absence and no reason is given in the record, an absence is deemed unexcused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 191 (Iowa 1984). See also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

Every employer is entitled to expect its employees to report to work as scheduled. The employer has established that the claimant was warned that further unexcused absences (including late arrivals) could result in termination of employment. Claimant himself admits he knew after receiving the First and Final Written Reprimand, he would be fired if he was late again. Claimant had seven late arrivals prior to his last absence; his last absence was unexcused. The evidence in the record shows the employer discharged claimant for excessive, unexcused absenteeism. Benefits are withheld.

**DECISION:**

The July 10, 2024 (reference 01) unemployment insurance decision is affirmed. The employer discharged claimant from employment due to job-related misconduct. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Elizabeth A. Johnson  
Administrative Law Judge

August 5, 2024  
Decision Dated and Mailed

lj/jcb

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.