

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALTAVIOUS CAMPBELL**

Claimant

**APPEAL 20A-UI-03783-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASTERBRAND CABINETS INC**

Employer

**OC: 12/15/19**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On May 6, 2020, the claimant filed an appeal from the April 30, 2020, (reference 05) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2020. Claimant participated. Employer did not register 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: Claimant began working for employer on July 1, 2019. Claimant last worked as a full-time MB finisher. Claimant was separated from employment on March 1, 2020, when he was terminated.

Claimant was scheduled to start work at 7:00 a.m. Employer had a policy stating that if an employee was going to be absent or late, the employee needed to notify employer prior to 6:30 a.m. Claimant was aware of the policy.

In early 2020, claimant was late for work due to transportation issues. Claimant did not notify employer he was going to be late. He was given a verbal warning.

In January or February 2020, claimant was again running late due to transportation issues. At 6:40 a.m., claimant notified employer he was going to be late. Claimant was late. Employer sat down with claimant and gave him a written warning regarding the incident. Employer told claimant that if it happened again he would be terminated.

On February 27, 2020, claimant realized at 6:40 a.m. that he was probably going to be late to work due to transportation issues. Employer told claimant that if it happened again, he would be terminated. Because of this, claimant decided not to go to work and did not notify employer he would be absent.

On March 1, 2020, supervisor Maria Martin told claimant that she received an email from the human resource department that she had to let claimant go.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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 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).

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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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 due to properly reported illness are excused, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

In this case, claimant violated employer's attendance policy twice because he was tardy due to transportation. Claimant also failed to call employer in a timely manner to report he would be tardy. After being told one more occurrence would result in termination, claimant had a no-call/no-show absence.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. 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 unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The April 30, 2020, (reference 05) decision is affirmed. 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.



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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

May 28, 2020  
Decision Dated and Mailed

cal/scn

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.