

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JUSTIN BROWN**  
Claimant

**EASTSIDE INC**  
Employer

**APPEAL NO. 14A-UI-02061-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/19/14  
Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Justin Brown (claimant) appealed an unemployment insurance decision dated February 11, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from Eastside, Inc. (employer) for work-related misconduct. The claimant initially requested an in-person hearing for Creston, which delayed the hearing from being promptly scheduled. The claimant contacted the Appeals Bureau on April 8, 2014, and requested to change his in-person request to a telephone hearing.

A hearing notice was sent out on April 10, 2014, scheduling the matter for a hearing in Creston on April 24, 2014. The administrative law judge was scheduled for seven telephone hearings prior to this hearing and did not receive the file until shortly before the hearing. The administrative law judge did not realize the hearing notice was set for an in-person hearing in Creston. The parties arrived at the local Creston office and Workforce representatives contacted the Appeal Section. The administrative law judge went forward with a telephone hearing on April 24, 2014. The claimant participated in the hearing. The employer participated through Scott Brown, Shop Manager. Iowa Workforce District Manager was present for the hearing and assisted the parties with submission of documents.

**ISSUE:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time mechanic from December 8, 2011, through January 18, 2014, when he was discharged due to repeated tardiness and the fact that he was not dependable. No formal written disciplinary warnings were issued to him for attendance although he did receive some verbal warnings.

The claimant had a long history of tardiness and absenteeism but the last three absences on January 14, 16, and 17, 2014 were due to illness. He properly reported these absences except for one of those days when he could not report his absence due to being at the emergency room. However, he provided medical documentation to substantiate that. The claimant was late on December 30, 2013, but the four absences prior to that day were absences due to vacation, which were excused.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 18, 2014, for 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. 871 IAC 24.32(7).

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant's final absences were due to properly reported illness and are therefore not considered misconduct under the unemployment insurance laws. Although the claimant had a long history of unexcused absences, the employer never issued any formal disciplinary warnings. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Because the final absences were related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

**DECISION:**

The unemployment insurance decision dated February 11, 2014, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs