

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRUCE A ABATHAN**  
Claimant

**APPEAL 15A-UI-04688-EC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 03/29/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)A – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The Claimant, Bruce Abathan, filed an appeal from the April 10, 2015, (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment on March 26, 2015, based on repeated tardiness in reporting for work after he was warned. The parties were properly notified about the hearing. A telephone hearing was held on May 8, 2015. The claimant, Bruce Abathan, participated in the hearing, along with his attorney, Amber Shanahan-Fricke. The employer, Prairie Meadows Racetrack & Casino, participated through Pam Anderson, HR Generalist.

**ISSUE:**

Was the separation a discharge for misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Bruce Abathan, was employed full time as a main kitchen line cook at Prairie Meadows Racetrack & Casino, the employer, from April 30, 2007, and was separated from employment on March 25, 2015. Pam Anderson, HR Generalist, along with the HR Director and the Director, made the decision to terminate his employment due to excessive tardiness. These pertinent facts are not in dispute.

The claimant was discharged from employment due to a final incident of absenteeism, tardiness and an improper call-in, that occurred on March 25, 2015. He was last warned on February 24, 2015, regarding the dire situation with his continued lateness. He was told that his job was in jeopardy.

The employer issued a new attendance policy in March of 2014. The claimant was aware of this policy change. The prior attendance policy allowed 9 points. The new policy allowed 4 points. Otherwise, the policy remained the same regarding the assessment of points for improper call-in, absences, and tardiness. The claimant signed the new policy. He

remembered a company meeting where the employees were told how they would be affected. The claimant knew the policy, that he was required to call in, at least 30-90 minutes before the shift starts, to say that he would be late. According to the claimant, the schedule sometimes changed without notice. The two-week schedule was posted on the wall.

Prior violations of the attendance policy, resulting in the accumulation of points, occurred on the following dates: (1) On May 31, 2014, the claimant called in, saying his car broke down. One point was assessed. (2) On July 14, 2014, the Claimant made an improper call-in, saying he had a flat tire. One-half point was assessed. (3) On August 8, 2014, the claimant made an improper call-in, and came in late to work, saying that the schedule was changed without his knowledge. One point was assessed. (4) On February 18, 2015, the claimant made an improper call-in, and came in late to work, saying that the schedule was changed without his knowledge. One point was assessed. On February 27, 2015, the claimant was informed that he had 3.5 points under the attendance policy. The employer informed the claimant that his job was in jeopardy due to the dire situation of his continued tardiness.

On March 25, 2015, the claimant was late to work, and did not call in prior to the start of his shift. The claimant admitted that there was no excuse for his tardiness and failure to call in that day. One point was assessed for this incident, bringing the total to 4.5 points. The employer told the claimant to go home while they verified the information and made a decision regarding his employment.

On March 26, 2015, the claimant was informed, in person, that his employment was terminated for these violations of the attendance policy, for accumulating 4.5 points, as described above.

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

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

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 bears the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits includes deliberate acts or omissions constituting a material breach of the worker's duties and obligations to the employer. See Iowa Admin. Code r. 871-24.32(1).

Excessive unexcused absences are properly deemed to be misconduct under the governing regulations. Excessive unexcused absences are considered to be an intentional disregard of the duty owed by the claimant to his or her employer. Iowa Admin. Code r. 871-24.32(7). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984).

The first two incidents, when the claimant's car broke down and he had a flat tire, were not excused absences, because they relate to an issue of personal responsibility, transportation. His improper call-in, on three occasions, is another issue of personal responsibility and a demonstration of repeated carelessness, not an excused absence. He did not properly report his tardiness to his employer. Iowa Admin. Code r. 871-24.32(7). The final incident, when the Claimant was late to work and did not call in, when he admitted he had no excuse for his failure to do so, was another demonstration of repeated carelessness and a deliberate act or omission of his obligation to his employer. The final incident was undisputedly an unexcused absence.

An employer's attendance policy is not necessarily dispositive of the issue of qualification for unemployment insurance benefits. However, an employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The employer has credibly established that this claimant was warned that further unexcused absences or tardiness could result in termination of employment. The final incident of tardiness was not excused. The final absence, in combination with claimant's history of unexcused absenteeism or tardiness, is considered excessive. The employer met its burden in this case. Benefits are denied.

**DECISION:**

The April 10, 2015, (reference 01) unemployment insurance decision is affirmed. Benefits are denied. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are denied 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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Emily Gould Chafa  
Administrative Law Judge

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Decision Dated and Mailed

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