

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRYAN D HEEREN**  
Claimant

**DERBY TRUCKING LLC**  
Employer

**APPEAL 20A-UI-00999-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/05/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On February 3, 2020, the claimant filed an appeal from the January 30, 2020, (reference 01) 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 February 18, 2020. Claimant participated personally and was represented by attorney Willis Hamilton. Employer participated through owner Josh Derby. Claimant's Exhibits 1 and 2 were admitted into the record.

**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 January 1, 2016. Claimant last worked as a full-time truck driver. Claimant was separated from employment on January 3, 2020, when he was terminated.

Employer has an attendance policy. The policy states that employees will be disciplined for unapproved absences and can be terminated on the third disciplinary action. The policy requires employees to notify owner Josh Derby of any absence as soon as possible. Claimant was aware of the policy.

At some point during his employment, claimant was injured and filed a claim for workers' compensation benefits.

Claimant requested time off to attend an October 29, 2019, appointment with his attorney regarding his workers' compensation claim. Although Derby responded in a callous manner, his text message states the absence will be "approved." Claimant attended the appointment and was absent from work that day.

In December 2019, claimant requested to be absent on four separate dates for appointments related to his claim for workers' compensation benefits. Derby approved all of the absences, except for December 13, 2019. Claimant explained he had an Independent Medical Examination scheduled for that day and it would be extremely difficult to reschedule. Derby stated that he could be absent on any other date, but his absence on December 13 would not be approved as another employee had already been given time off that day. Claimant went to the appointment anyway and was absent from work.

On December 14, 2019, Derby gave claimant two written warnings—one for the October 29 absence and one for the December 13 absence.

Employer has a policy stating that an employee must have a valid medical certificate in order to drive for the company.

On December 30, 2019, claimant notified Derby that he injured his knee. Claimant also informed Derby that his medical certificate had expired on December 21, 2019, and that he was scheduled to drive the next day. Derby told claimant to go to the doctor and get it taken care of and then call him. Claimant went to the emergency room that evening regarding his knee injury.

Claimant was absent from work on December 31, 2019, because he did not have a valid medical certificate and did not believe he could drive under employer's policy. Claimant could not get an appointment with the chiropractor regarding his medical certificate that day, as it was New Years' Eve. Claimant did not contact Derby and notify him he could not get in to see the chiropractor that day.

On December 31, 2019, the dispatcher contacted claimant to assign him to drive a load to South Dakota on January 2, 2020. Claimant sent a text message to the dispatcher stating he was not ready to drive. The dispatcher informed Derby about claimant's reply.

On January 2, 2020, claimant was absent from work. Claimant did not personally notify Derby of his absence that day. Later that day, claimant was able to get into the chiropractor and get his medical certificate updated. At 4:00 p.m., claimant sent a text message to Derby stating he got the certificate and was ready to go to work the next day. Derby responded by stating claimant could resign or meet with him the next day. Claimant stated he was not resigning.

On January 3, 2020, claimant met with Derby. Derby terminated his employment.

## **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, employer terminated claimant because of absenteeism. Four dates are at issue.

The absence on October 29, 2019, is considered excused pursuant to employer’s text message stating it was approved. Even if employer asserts it was a typographical error, the fact remains the text message states the absence was approved and claimant reasonably relied on the text message in missing work that day.

The absence on December 13, 2019, is considered unexcused. Even though claimant had a good reason for being absent that day, employer is running a business and the owner was within his rights to tell claimant he needed to reschedule the appointment for another day. Claimant declined to do so and was absent anyway.

The absences on December 31, 2019, and January 2, 2020, were for personal reasons. It was claimant’s responsibility to maintain a valid medical certificate. Claimant was aware that if he failed to do so, he could not drive. Claimant failed to do so and therefore missed work for two days. Claimant did not miss work because of the knee injury, as he was able to see a doctor the same evening the injury occurred. The absences were not for reasonable grounds and are considered unexcused.

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 January 30, 2020, (reference 01) 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  
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February 21, 2020  
Decision Dated and Mailed

cal/scn