

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSHUA WROGG
Claimant

CBE COMPANIES INC
Employer

APPEAL NO. 14A-UI-01903-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/19/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Joshua Wrogg (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 CBE Companies, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2014. The claimant participated in the hearing. The employer participated through Toni Babcock, Human Resources Manager; Matt Matthias, Manager of Operations; and Jon Primus, Director of Operations. Employer's Exhibits One and Two were admitted into evidence.

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 most recently worked as a full-time associate/collector and was employed from October 28, 2013, through January 8, 2014, when he was discharged for excessive unexcused absenteeism. He received a coaching and a verbal warning on December 13, 2013. The claimant was considered to have voluntarily quit after he was a no-call/no-show for three consecutive days. He was a no-call/no-show on January 2, 2014, but called in his absence on January 3, 2014. He was a no-call/no-show on Saturday, January 4; Monday, January 6; and Tuesday, January 7, 2014. The claimant was told he was no longer employed on January 8, 2014, when he tried to swipe his identification card to enter the building and it did not work.

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 February 8, 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).

The Iowa Supreme Court in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. The Court in the case of *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984) held that absences due to matters of "personal responsibility such as transportation problems and oversleeping are considered to be unexcused."

The claimant had four no-call/no-shows in the last week of his employment and although he contends that he called in on two of those dates, the preponderance of the evidence does not support that claim. Two consecutive no-call/no-show absences can constitute job misconduct. *Boehm v. IDJS*, (Unpublished, Iowa App. 1986).

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 absences, in combination with the claimant's history of absenteeism, are considered excessive. Benefits are denied.

DECISION:

The unemployment insurance decision dated February 11, 2014, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css