

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

---

**HEATHER L RENAUD**

Claimant,

and

**WESLEYLIFE**

Employer.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 14B-UI-09519**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

---

Kim D. Schmett

### CONCURRING OPINION OF ASHLEY KOOPMANS:

As the Claimant representative on the Board, I write separately only to explain some of the background of absenteeism analysis in unemployment law. I concur fully in today's decision.

The requirements for a finding of misconduct based on absences are twofold. First, the absences must be excessive. *Sallis v. Employment Appeal Bd*, 437 N.W.2d 895, 897 (Iowa 1989). Second, the absences must be unexcused. *Cosper v. IDJS*, 321 N.W.2d 6, 10 (Iowa 1982). The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds", *Higgins v. IDJS*, 350 N.W.2d 187, 191 (Iowa 1984), or because it was not "properly reported". *Cosper v. IDJS*, 321 N.W.2d 6, 10(Iowa 1982)(excused absences are those "with appropriate notice").

In the case of *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa App. 2007) the Court considered a policy that extended absences cannot be excused unless accompanied by a doctor's note. The Court specifically considered "whether the employer may graft additional requirements to define what is 'unexcused.'" *Gaborit* at 557. The Court held that it was the legislature, through the code and the rules of Workforce, that "defines an unexcused absence for unemployment compensation eligibility purposes." *Gaborit* at 557. In *Gaborit* the Court specifically noted "[w]e do not define 'properly reported' under the Iowa Administrative Code as the Board found that Gaborit properly notified her employer..." *Gaborit* at n. 1, p. 557. Thus the issue of proper reporting has not been determined to be completely independent of the Employer's policies.

Naturally, the Employer will not be able to dictate any reporting requirement it wishes. Instead, the review is for the reasonableness of the policy. On the other hand, reporting requirements are not one size fit all since surely the need to know that a surgeon will not be available on a given day is different than the need to know that a subway sandwich artist will not be available. Thus the legal test is *not* governed by whatever the Employer says, but neither is it completely independent. Since the requirement of proper reporting here is a reasonable one, I voted to affirm. Finally, I note that absenteeism also includes tardiness, and then even being a minute late can, in appropriate circumstances, be disqualifying. *Infante v. IDJS*, 364 N.W.2d 262, 266 (Iowa App. 1984)(final incident one minute late); *Higgins v. IDJS*, 350 N.W.2d 187, 192 (Iowa 1984).