

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MBANGUKIRA MARTIN**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 21A-UI-11266-AR-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On April 13, 2021, claimant, Mbangukira Martin, filed an appeal from the April 5, 2021, reference 02, unemployment insurance decision that denied benefits based upon the determination that the employer, Tyson Fresh Meats, Inc., discharged claimant for excessive, unexcused absenteeism. The parties were properly notified about the hearing held by telephone on July 15, 2021. The claimant participated personally. The employer participated through Breanna Cook. Claimant's Exhibits A through D were admitted to the hearing record. CTS Language Link provided language services for claimant.

**ISSUE:**

Did the employer discharge claimant for job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a "no jobber" beginning on December 18, 2017, and was separated from employment on March 5, 2021, when he was discharged.

In approximately December 2020, claimant suffered an injury at work. He was receiving treatment for his injury through the employer. Claimant accrued a number of points on days he was absent due to treatment for the injury. The employer removed those points from his attendance total and allowed him to remain employed.

Between February 20, 2021, and March 2, 2021, claimant was considered a no call/no show for seven consecutive shifts. Claimant did not believe these to be absences, technically, because the employer was aware he was struggling with his work-related injury. Nevertheless, claimant was not at work during those dates, nor did he call into the employer to notify it he would not be at work. He also did not provide the employer with doctor's notes excusing him from work for these days.

On March 3, 2021, claimant was excused from work for one week by his doctor. That note was provided to the employer promptly. Claimant was out of work for properly reported absences on

March 3 and 4, 2021. On March 5, 2021, claimant went to work and worked a shift. That day, he was discharged for excessive absenteeism, based on his absences from February 20, 2021, through March 2, 2021. He had accrued 46 points under the employer's attendance policy at the time of his termination. The employer's policy calls for termination at 15 points. None of the points were accrued on days that he received treatment and was absent for the work-related injury.

The employer had warned claimant about attendance in the past. Most recently, in January 2021, claimant was issued a warning for attendance. At that time, he was warned that further absences could result in his termination.

### **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.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, 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 v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982); *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*, 734 N.W.2d 554. 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. Iowa Admin. Code r. 871—24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n.1 (Iowa 1984) (holding "rule [2]4.32(7)...accurately states the law").

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192. Second, the absences

must be unexcused. *Cosper*, 321 N.W.2d at 10. The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” *Higgins*, 350 N.W.2d at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper*, 321 N.W.2d at 10.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term “absenteeism” also 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* 350 N.W.2d 187. Absences due to illness or injury must be properly reported in order to be excused. *Cosper*, 321 N.W.2d 6. When no excuse is given for an absence at the time of the absence and no reason is given in the record, an absence is deemed unexcused. *Higgins*, 350 N.W.2d at 191; see also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

An employer’s point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. However, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Additionally, the employer cannot demonstrate that a claimant’s absences are disqualifying if the employer was aware that the properly reported absence was related to the claimant’s work-related injury. However, claimants also bear the responsibility of maintaining contact with the employer in order to inform it when the employee cannot be at work.

Here, claimant’s final absences were properly reported and due to illness, and were excused, as a result. Accordingly, his history of absence must be examined to determine whether absences were both excessive and unexcused. The absences that preceded claimant’s final absences were not properly reported. There was no way for the employer to know that claimant’s absences from February 20, 2021, through March 2, 2021, were related to his injury, because he did not tell the employer as much. It is not reasonable for the claimant to simply expect the employer to infer that his absences are injury-related because he sustained a work-related injury. While his absences between February 20, 2021, and March 2, 2021, may have been related to his injury, the employer had no way to know that. His absences were not properly reported. They were unexcused and excessive in nature. Benefits are denied.

**DECISION:**

The April 5, 2021, (reference 02) unemployment insurance decision is affirmed. 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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Alexis D. Rowe  
Administrative Law Judge

July 26, 2021  
Decision Dated and Mailed

ar/lj