

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JOHN B BAHATI**  
Claimant

**APPEAL NO. 10A-UI-07976-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 06/21/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

John Bahati (claimant) appealed a representative's May 27, 2010 decision (reference 09) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with REM Iowa Community Services (employer) for repeated tardiness in reporting for work. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for July 12, 2010, in Cedar Rapids, Iowa. The claimant was represented by Matt McMurer, Student Attorney, and participated personally. The employer participated by Mark Serterh, Program Director. John Allen, Clinical Professor, observed the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 20, 2009, as a full-time direct support professional. The claimant signed for receipt of the employer's handbook on October 20, 2009. In January or February 2010, the employer transferred the claimant to another facility and reduced his hours to part-time work. The claimant was tardy for work about once per week. The claimant's co-workers were also late to work frequently and the employer tolerated employee tardiness. On January 19, 2010, the employer issued the claimant a written warning for unknown attendance issues. On January 21, 2010, the employer issued the claimant a written warning when he was confused about a day he volunteered for a shift. The employer notified the claimant that further infractions could result in termination from employment.

On February 4, 2010, the claimant was tardy for work due to inclement weather. On February 6, 2010, the claimant helped his cousin with weather-related transportation issues. A co-worker who had more seniority than the claimant told the claimant he would stay late to cover the claimant's shift. On February 16, 2010, the claimant was tardy for work after his car went in a ditch and he walked over three miles to work. On February 18, 2010, the claimant

was tardy due to transportation issues. The employer terminated the claimant on February 22, 2010. Other workers who were frequently tardy were not terminated.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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.

871 IAC 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). 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. A worker is entitled to be treated the same as other employees. The employer allowed other employees to frequently arrive to work tardy but terminated the claimant for similar behavior. The employer failed to produce any reason why the claimant was treated differently than other employees who were similarly situated. The claimant was terminated but the employer did not provide sufficient evidence to prove misconduct. Benefits are allowed.

**DECISION:**

The representative's May 27, 2010 decision (reference 09) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css