

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEREMIAH L WEIGELT**  
Claimant

**BURKE MARKETING CORPORATION**  
Employer

**APPEAL 17A-UI-00161-SC**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/27/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jeremiah L. Weigelt (claimant) filed an appeal from the December 22, 2016 (reference 02) unemployment insurance decision that denied benefits based upon the determination Burke Marketing Corporation (employer) discharged him for violation of a known company policy. The parties were properly notified about the hearing. A hearing was held in Des Moines, Iowa on February 22, 2017 at 9:00 a.m. The claimant participated. The employer participated through Human Resources Manager Shelli Seibert. Claimant's Exhibits A and B were received. Employer's Exhibits 1 through 3 were received.

**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 the facts in this case are largely uncontested. The claimant was employed full-time as a Mixer Operator beginning on March 23, 2009, and was separated from employment on November 23, 2016, when he was discharged for violating the employer's attendance policy. The employer has an attendance policy that states after four attendance points an employee is subject to termination. The employer's policy also states that employees will receive a verbal warning at one point, a written warning at two points, and a written warning at three points. An employee who is late to work by less than half of his shift receives a half point. At the beginning of the calendar year, employees are given three credits in personal days that can be used to prevent accrual of attendance points.

The claimant was tardy 0.02 and 0.17 hours nine times between February 4, 2016 and August 8, 2016. On August 8, 2016, the claimant was punching in as the time clock changed showing him tardy for work. The claimant used all three of his personal day credits and started accumulating attendance points on his seventh tardy. On August 9, 2016, the claimant received a first written warning for reaching two and a half points effective August 6, 2016. On August 16, 2016, he received a second written warning as he had reached three points with his tardy on August 8, 2016.

On September 2, 2016, the claimant was 0.07 hours late to work. He received a second written warning on September 6, 2016 for reaching three and a half points. On September 8, 2016, the claimant was 0.12 hours late. On September 26, 2016, recognizing that employees were working long hours, the employer gave each employee either an extra personal day or took one point off their attendance accumulation. On October 20, 2016, the claimant was tardy by 0.07 hours. He received a second written warning on October 25, 2016 for being at three and a half points. The next disciplinary step listed on the form the claimant signed was termination.

On November 15, 2016, the claimant was 0.03 hours late to work and was 0.02 hours late the following day. The employer does not get notice of attendance violations until the following week after payroll is processed. The claimant's only explanation for his tardiness is that he overslept as he is a heavy sleeper and did not wake up to his seven alarms. The claimant was discharged on November 23, 2016 for his repeated tardiness.

### **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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct, stating:

"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. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Iowa Admin. Code r. 871-24.32(1)a. This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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); 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 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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. The claimant was absent a total of 14 times between February 4 and November 16, 2016, which is excessive. His absences were due to oversleeping which renders them unexcused. 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. Accordingly, benefits are withheld.

**DECISION:**

The December 22, 2016 (reference 02) unemployment insurance 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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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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