

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANTHONY M WILLIAMS**  
Claimant

**FEDEX FREIGHT EAST INC**  
Employer

**APPEAL 18A-UI-03853-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/04/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant/appellant, Anthony M. Williams, filed an appeal from the March 22, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 19, 2018. The claimant, Anthony M. Williams, participated personally. The employer, Fedex Freight East Inc., did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**Note to claimant:** Additional information about food, housing, and other resources, can be found by dialing 211 or at [www.211iowa.org](http://www.211iowa.org).

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did the claimant voluntarily quit the employment with good cause attributable to the employer?

**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 dock worker, and was separated from employment on February 28, 2018, when he was discharged for excessive absenteeism.

The claimant resided in Des Moines and Altoona in his final months of employment, and the employer's premises were located in Ankeny. The claimant operated an older vehicle, and stated because he worked the overnight shift (10:00 p.m. to 6:30 a.m.), no bus or community transportation was available to him. The claimant did not request any ride from a co-worker to help him get to work.

The final incident occurred on February 20, 2018, when the claimant was absent from work due to his car not starting. The claimant called in prior to his shift to report his absence. Prior to the claimant's final absence, he had been placed on a 90 day probationary period, effective January 31, 2018, due to ongoing absences (see fact-finding documents). The claimant had also been issued a written warning on August 29, 2017, for accumulating three absences, another written warning on September 6, 2017 after an absence on August 31, 2017, and a final warning with a 90 day probation effective October 13, 2017, after an absence on October 2, 2017 (see fact-finding documents). The claimant acknowledged he thought all of his absences were due to ongoing car issues, which began in August 2017, and were still going on at the time of separation.

### **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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(1)a provides:

Discharge for misconduct.

(1) Definition.

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. 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.

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).

In the specific context of absenteeism the administrative code provides:

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.

871 IAC 24.32(7); See *Higgins v. IDJS*, 350 N.W.2d 187, 190 n. 1 (Iowa 1984) (“rule [2]4.32(7)...accurately states the law”).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” *Higgins at 191*, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper at 10*. Absences due to properly reported illness are excused, 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, supra*; *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, supra*. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

The claimant in this case acknowledged he had repeated absences, beginning in August 2017, until his discharge on February 28, 2018, related to his car. The employer documented at least six absences during this period, which led to the claimant being issued warnings and being placed on probationary status on January 31, 2018 (fact-finding documents). The claimant did not dispute the frequency of absences but stated only that he had been continuously having transportation issues related to his older car since August 2017, and had not found alternative means of transportation. The claimant’s final absence on February 20, 2018, was also related to a lack of transportation. Absences related to transportation are not considered excused absences, even if properly reported. Therefore, the administrative law judge concludes the claimant had a minimum of seven unexcused absences before discharge.

The second step in the analysis is to determine whether the unexcused absences were excessive. Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929\*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep’t of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

Two absences would be the minimum amount in order to determine whether these repeated acts were excessive. Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. In this case, the claimant had at least seven unexcused absences related to a lack of transportation. This is clearly excessive.

The administrative law judge is sympathetic to the claimant but is persuaded that the claimant knew or should have known his job was in jeopardy based on his repeated absences. Further, this was not a case of a single absence related to a car not starting or breaking down, but an

ongoing issue for approximately six months. Based on the evidence presented, the administrative law judge concludes that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The March 22, 2018, (reference 02) decision is affirmed. The claimant was discharged for disqualifying job-related misconduct. 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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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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