

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ALEX J FLOYD**  
Claimant

**APPEAL NO: 19A-UI-01757-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BERTCH CABINET MFG INC**  
Employer

**OC: 12/23/18**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 21, 2019, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 13, 2019. The claimant participated in the hearing with Attorney Casey Steadman. Mitzi Tann, Human Resources Director; Tim Rickert, Department Leader of L60; and Tracy Bertch, Plant Manager of the Legacy Plant; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time finishing apprentice for Bertch Cabinet Manufacturing from November 19, 2018 to February 6, 2019. He was discharged for excessive unexcused absenteeism.

The employer's attendance policy allows employees to accumulate three unexcused absences within a rolling six month period. Employees are given four sick leave days in a rolling calendar year.

Employees work Monday through Thursday from 6:30 a.m. to 4:30 p.m. The claimant suffers from anxiety and depression. On December 4, 2018, the claimant was tardy. He used his four allowed sick leave days January 2, January 3, January 21 and January 28, 2019. He called in sick with doctor's notes January 29 through February 1, 2019, and accumulated four unexcused absences. He returned to work February 4, 2019, and repeatedly asked Department Leader of L60 Tim Rickert if he was going to be discharged due to his attendance. Mr. Rickert stated he needed to speak to Plant Manager of the Legacy Plant Tracy Bertch and Mr. Bertch was out due to illness. On February 5, 2019, the claimant continued to "pester" Mr. Rickert about his employment status but Mr. Rickert explained he still could not give him a definitive answer as Mr. Bertch was still out sick. Mr. Rickert said he would talk to the claimant the next day but the

claimant said he “could not handle the waiting” and left at 10:00 a.m. earning another attendance point as he was gone more than two hours of his shift. He asked Mr. Rickert if he would be terminated if he left and Mr. Rickert told him it would be another unexcused absence and “was not going to help (his) situation” but the claimant chose to leave anyway. On February 6, 2019, Mr. Bertch returned to work and met with Mr. Rickert about the claimant’s absenteeism and the decision was made to terminate the claimant’s employment.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee’s conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful

wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant has anxiety and depression and had doctor's notes covering his absences with the exception of the final absence February 5, 2019. Consequently, the claimant's absences prior to February 5, 2019, are considered excused absences. The February 5, 2019, absence however, while unexcused, was an isolated incident of misconduct on the part of the claimant and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The February 21, 2019, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn