

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEX ANDERSON**

Claimant

**APPEAL NO: 12A-UI-04149-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LANCE PRIVATE BRANDS LLC**

Employer

**OC: 03/18/12**

**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Alex Anderson (claimant) appealed an unemployment insurance decision dated April 12, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Lance Private Brands, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2012. The claimant participated in the hearing with his father, Gene Anderson, in attendance. The employer participated through Amanda Mullins, Human Resources Generalist. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 employed as a part-time packer from June 12, 2008 through March 22, 2012. The employer has an attendance point system that is based on a six-month rolling calendar. Once an employee accumulates six points, he is discharged. The employer has over 800 employees and was not catching all its employees' absences until it hired a new clerk with that sole responsibility. An employee receives one point for an absence and a half a point for a tardy or a half day.

The claimant was discharged from employment due to excessive absenteeism with a final incident on March 19, 2012 when he was tardy. The claimant was last warned on February 29, 2012, that he faced termination from employment for continued absenteeism. He had five attendance points at that time and received a half point for going home early on March 7, 2012 and the final half point was assessed on March 19, 2012.

One point each was assessed to the claimant for an absence due to illness on October 28, November 16, and December 9, 2011. The claimant was upset that these points were assessed since he contends they had never been assessed before. He believes that the employer began assessing points after he told them he had some medical problems but it just happened to coincide with the employer hiring a new employee to keep track of absences.

Subsequent to these absences, the claimant was tardy four times prior to the final incident. He was tardy on December 13, 2011; January 18, 2012; January 31, 2012; and February 29, 2012. The claimant did not dispute being tardy and did not really have an explanation for it.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

871 IAC 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.

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

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considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 22, 2012 for excessive absenteeism. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. 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. 871 IAC 24.32(7); *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007).

In the case herein, the claimant contends that three and one half attendance points were due to properly reported illness. He is right in that those absences are not unexcused under the unemployment insurance laws. However, he did have unexcused absences for the last five of six absences due to tardiness. Three incidents of tardiness or absenteeism after a warning constitute misconduct. *Clark v. Iowa Department of Job Service*, 317 N.W.2d 517 (Iowa App. 1982). The employer has established that the claimant was warned that further 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 absenteeism, is considered excessive. Benefits are therefore denied.

#### **DECISION:**

The unemployment insurance decision dated April 12, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until 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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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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