

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIME N HENDERSON
Claimant

APPEAL 16A-UI-09012-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERBRAND CABINETS INC
Employer

**OC: 12/20/15
Claimant: Appellant (1)**

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 filed an appeal from the August 9, 2016, (reference 06) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on September 9, 2016. The claimant, Time N. Henderson, participated. The employer, Masterbrand Cabinets, Inc., participated through Stephanie Moseley, senior human resources generalist. Employer's Exhibit 1 was received and admitted into the record without objection.

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: Claimant was employed full time, most recently as a woodworker, from April 20, 2015, until July 22, 2016, when he was discharged for absenteeism.

Claimant's final absences occurred on July 15 and 18, 2016. Claimant called in both days to report that his brother had died and he needed some time off. When claimant returned on July 19, Moseley had a conversation with him. Moseley told him that he was eligible for three days of bereavement leave that would not cause him to accrue attendance points. She informed him that by July 21, the employer needed some documentation to prove the cause for his absence. Claimant told her that he was not computer-savvy and did not know how to get documentation. Moseley told him he could provide something from the newspaper, the hospital, or the funeral home. Claimant testified that Moseley told him that if he could not get documentation, he would be discharged. On July 20, claimant's supervisor reminded him that he needed to provide documentation. On July 21, Moseley spoke with claimant again, and claimant still did not have any documentation. Moseley gave him until the following day at noon to provide the documentation. She informed him that failure to provide the documents would lead to

attendance points accruing for his absences. Claimant did not provide the proper documentation by 2:00 p.m. the following day, so the employer discharged him.

On July 11, 2016, claimant took time off to meet with the tax examiner. He did not have sufficient PTO available to cover the hours he was gone, so he received one attendance point. On January 29, 2016, claimant was 22 minutes late due to having a flat tire. He received one attendance point for this absence, as he failed to call in more than 30 minutes before the start of his shift. Claimant was late to work on September 28 and 29, and he did not call or provide a reason for arriving late to work those days. On September 3, claimant left early due to illness and did not provide any documentation excusing his departure. On August 28, claimant arrived to work 22 minutes late and did not call in or report a reason for his absence. Claimant received a warning on September 28, 2015, and was told that his job was in jeopardy under the attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld.

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.

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.

Excessive absences are not considered misconduct unless unexcused. 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. 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. 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) (emphasis added); 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 requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989).

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. 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.

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 employer has established that the claimant was warned that further improperly reported or unexcused absences could result in termination of employment and the final absence was not properly reported or excused. Claimant received a warning related to his attendance in September 2015. Additionally, prior to his discharge, Moseley told him that if he did not provide documentation related to his brother’s death, he would be discharged as the absences would not be excused. Claimant’s absences on July 15 and 18, though for reasonable grounds, were not properly reported to the employer. Additionally, discounting the day that claimant left early due to illness, he had five additional unexcused or improperly reported absences in the year preceding his discharge. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The August 9, 2016, (reference 06) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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