

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MABIOR MABIOR**  
Claimant

**APPEAL NO: 15A-UI-09120-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURKE MARKETING CORPORATION**  
Employer

**OC: 06/28/15**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 17, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 1, 2015. The claimant participated in the hearing. Shelli Seibert, Human Resources Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 and Employer's Exhibits One and Two were admitted into evidence.

**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: A disqualification decision was mailed to the claimant's last-known address of record on July 17, 2015. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 27, 2015. The appeal was not filed until August 12, 2015, which is after the date noticed on the disqualification decision. The claimant did not receive the decision as he had moved and had no stable address so could not submit a change of address card. He called the Department in July 2015 and was told the representative's decision denied benefits. He believed he needed to go to Des Moines in person to file an appeal but did not have a ride until August 12, 2015. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time sanitation worker/production laborer for Burke Marketing Corporation from March 11, 2014 to June 22, 2015. He was discharged from employment due to a final incident of absenteeism that occurred on June 21, 2015.

The employer uses a point-based attendance policy. Employees are allowed four personal days and then accumulate points for absences after that. They are assessed one point for a full

day absence and one-half point for a one-half day absence, an incident of tardiness or leaving early of four hours or less. Employees receive a first written warning at two points and a second written warning at three points. Termination occurs after four unexcused absences following the four personal days allowed.

The claimant worked in sanitation and on the production line. He worked his sanitation shift from 1:30 a.m. to 7:00 a.m. and then worked on the production line from 7:00 a.m. to 11:00 a.m. or noon. The claimant was absent November 23, 2014 and December 3, 2014, for two attendance points which carried over to 2015. He received two personal days back on January 1, 2015. On January 28 and 29, 2015, the claimant was tardy and used one-half of a personal day for each day for his third personal day. On February 5, 2015, he left early and received one-half point for a total of three and one-half personal days and on February 6, 2015, he was absent and used his last one-half personal day for one-half of his absence and received one-half of an attendance point for a total of two and one-half points. On March 29, 2015, the claimant was absent and received one attendance point for a total of three and one-half attendance points. On June 8, 2015, the claimant was picked up by the police and the employer granted him a day off but assessed him one attendance point for a total of four and one-half points. The employer made an exception to its attendance policy and granted the claimant another chance. On June 21, 2015, the claimant called the employer and left a voice mail stating he would not be in and received his final point for a total of five and one-half points. He reported for his production shift June 22, 2015, at 7:00 a.m. and his employment was terminated.

The claimant received a written warning February 10, 2015, when he had a total of two and one-half attendance points and received a second written warning March 31, 2015, after accumulating three and one-half attendance points. On June 16, 2015, the employer addressed the claimant's June 8, 2015, absence and told him any additional absences, incidents or tardiness or leaving early prior to November 23, 2015, would result in termination. Most of the claimant's absences were due to transportation issues.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

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 Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

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. The final absence, in combination with the claimant’s history of absenteeism, is considered excessive. Therefore, benefits are denied.

**DECISION:**

The July 17, 2015, reference 01, decision is affirmed. The claimant’s appeal is timely. 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs