

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DONNA L PAULOS**  
Claimant

**ROCKWELL COLLINS INC**  
Employer

**APPEAL 15A-UI-04444-KC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 8, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 11, 2015. The claimant participated. The employer did not participate.

**ISSUE:**

Was the claimant discharged for work-related, disqualifying misconduct?

**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 senior assembler from June 6, 1988, and was separated from employment on March 28, 2015, when her employment was terminated by the employer.

The claimant sought medical treatment and received a note excusing her from work for March 9 through March 11, 2015. She called her employer each day before her shift started and provided the written medical excuse upon her return to her supervisor Travis Houser. She returned to work on the morning of March 11, after seeing a medical provider. On March 12, 2015, Sarah Nichol, employee relations consultant, advised her that her medical note could not be accepted because she wrote on it. The claimant acknowledged that she wrote “excused 3/9 – 3/11” on the note because she thought it was not clear. The typed medical note stated that she had been examined and was excused through March 11, 2015. The note also gave a number at which the employer could reach the provider with any questions. The claimant asked if it would help to get a clean copy of the original note. Nichol told her to give it to Houser. The claimant obtained a copy of the note from the medical provider for the same period and gave it to the employer on March 13, 2015.

The claimant understood the employer’s policy to be that it was necessary to call in sick before the start of the shift. A note from a provider was required when there were three consecutive days of absences due medical issues.

The claimant continued to work after March 13, 2015. An ombudsman spoke with the claimant in the following week. The claimant told the ombudsman why she wrote on the medical note. Neither the claimant's supervisor nor any member of human resources asked the claimant about the notation. The claimant's paycheck stub indicated that for March 9 and 10, the employer marked the absences as vacation and March 11 was identified as sick leave.

On March 27, 2015, Nichol gave the claimant a written statement indicating that her employment ended effective March 28, 2015 because she altered a physician's note in an effort to obtain approved leave. Nichol did not address the unaltered copy of the original medical note that the claimant provided at Nichol's direction. Nichol did not identify a company rule that had been violated.

The claimant had received no warnings about anything similar to the reasons for which she was terminated.

#### **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 § 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(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).

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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 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.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because her absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because her last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct.

Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The April 8, 2015, (reference 01) unemployment insurance 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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Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

kac/pjs