

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID DUOT
Claimant

SMITHFIELD FARMLAND CORP
Employer

APPEAL 17A-UI-04028-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/19/17
Claimant: Appellant (2)

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 4, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 17, 2017. Claimant participated personally and through Interpreter DDLJ with CTS Language Link. Claimant was represented by attorney Dennis McElwain. Leo Kanne observed. Employer did not participate. Claimant's Exhibits 1 and 2 were received.

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 began working for employer on April 30, 2013. Claimant last worked as a full-time processor on the slaughtering floor. Claimant was separated from employment on March 20, 2017, when he was terminated.

Employer has a no-fault attendance policy stating employees will be terminated after accumulating 12 attendance points. Claimant was aware of the policy.

On February 27, 2017, claimant was absent because of illness. Claimant properly reported the absence to employer. The absence caused claimant to accrue more than 12 attendance points. When claimant returned to work the next day, employer gave him paperwork to request Family and Medical Leave Act (FMLA) leave. Claimant brought the paperwork to his doctor and asked the doctor to complete the paperwork and send it to employer. Employer did not receive the completed paperwork from the doctor.

On March 20, 2017, claimant was terminated for accruing more than 12 attendance points. Employer never informed claimant the paperwork had not been completed and that he would be terminated if it did not receive the completed paperwork by a certain date.

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.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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).

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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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. Absences due to properly reported illness are excused, 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because his 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, without such, the history of other incidents need not be examined.

Even if claimant's doctor did not return a completed request for FMLA leave, it was not claimant's fault. Claimant was not warned the paperwork had not been completed, and it does not take away from the fact that claimant's last absence was due to properly reported illness. FMLA provisions were enacted to protect an individual's employment, not to be used as a weapon by an employer against its employee.

Employer failed to establish claimant was terminated for job-related misconduct.

DECISION:

The April 4, 2017, (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. Benefits withheld based upon this separation shall be paid to claimant.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/rvs