

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JALASHIA J TUCKER
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL 20A-UI-00175-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/01/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On January 6, 2020, Jalashia J. Tucker (claimant) filed an appeal from the January 2, 2020, reference 03, unemployment insurance decision that denied benefits based upon the determination Good Samaritan Society, Inc. (employer) discharged her for excessive unexcused absenteeism and tardiness after being warned. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2020. The claimant participated personally. The employer participated through Luann Brewington, Employee Relations Specialist. The employer's Exhibits 1 and 3 through 5 were admitted without objection. The employer's Exhibit 2 was admitted over the claimant's objection on the basis of relevance.

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: The claimant was employed part-time as a Certified Nursing Assistant (CNA) beginning on October 30, 2018, and was separated from employment on November 29, 2019, when she was discharged. The employer has an attendance policy that allows for nine attendance points per 12-month rolling calendar prior to discharge.

The claimant notified the employer of all of her absences prior to the start of each shift. The claimant was tardy from work on December 17, 2018, January 3, and February 7, 2019. She does not know why she missed work but it was likely related to transportation or childcare. The claimant was absent on January 7, due to her own illness and February 5, due to a sick child. The claimant is the only parent available to the child and the child's daycare will not accept her when she is sick. The claimant received a written warning on February 8 for accumulating three attendance points.

The claimant continued to be absent from work. She missed work on March 21 and June 18 due to a sick child. She missed work on May 4, June 4, and October 26 due to her own

personal illness. The claimant missed work on August 5 as she did not have childcare while her normal daycare provider was on vacation.

The claimant was also tardy to work. On May 25, she was tardy as she got caught in a flash flood close to work and her vehicle's engine flooded. The claimant was tardy on June 5, June 9, October 11, and November 14 due to a lack of childcare or lack of reliable transportation.

On November 25, the claimant was involved in a car accident on her way to work. She notified the employer and was required to seek medical care for herself and her child. The following day, she returned to work. The claimant received a final written warning due to her attendance. The employer told her that she had reached 14.5 points and any further absences or tardiness would result in termination of employment.

On November 28, the claimant was late to work as she forgot she had agreed to pick up a shift. She remembered when a co-worker contacted her. On November 29, the employer discharged the claimant for violation of its attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides, in relevant part:

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.

...

(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.

This definition of misconduct 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). 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 the 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); 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 twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). 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. 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. 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).

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 claimant had a total of 19 absences during her tenure. The nine absences related to her own personal illness, a sick child, the flash flood, and car accident are excused as they were properly reported and for reasonable grounds or illness. The other nine absences, not including the final absence, were all related to issues of personal responsibility, specifically childcare and

transportation. The flash flood and car accident, on the days they occurred, were emergency situations outside of the claimant's control rendering the absences excused. However, once she became aware of the issues with her transportation, it became the claimant's responsibility to find a way to get to work and any subsequent absences for those reasons were unexcused.

The employer warned the claimant that any further absences would result in discharge. The claimant's final absence on November 28 was not excused as it was for an issue of personal responsibility. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The January 2, 2020, reference 03, unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs