

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDI A STONE

Claimant

APPEAL 16A-UI-08754-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 07/24/16

Claimant: Appellant (2R)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 8, 2016 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting her employment. The parties were properly notified of the hearing. A telephone hearing was held on August 29, 2016. The claimant, Brandi A. Stone, participated personally. The employer, Whirlpool Corporation, participated through Human Resources Generalist Eric McGarvey. Employer's Exhibits 1 – 3 were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembler. She was employed from February 16, 2016 until June 30, 2016. The employer operates a manufacturing plant. Amy Stevens was claimant's immediate supervisor. Claimant's scheduled working hours were Monday through Friday from 7:00 a.m. to 3:30 p.m.

The employer has an attendance policy stating that an employee may be subject to discharge if they are absent for five consecutive work days which were not previously approved time off. The policy further states that if an employee cannot come to work they must notify the employer within thirty minutes of the employee's scheduled shift start time. There is a call-in hotline which employees are required to call to report an absence.

Claimant had received a written warning on April 29, 2016 for absences on February 29, 2016; March 17, 2016; March 29, 2016; and April 28, 2016. These absences were all reported prior to claimant's scheduled shift start time. These absences were due to claimant's children being ill.

The employer also has a policy regarding bereavement leave. See Exhibit 1. The employee must provide advanced notice of the dates they will be absent and submit a claim form with supporting documentation regarding the death of the family member if they wish to be paid. See Exhibit 1.

Claimant's grandmother passed away on June 17, 2016. Claimant was absent from work on June 16, June 17, and June 20, 2016 due to her grandmother's last illness and funeral. Claimant did properly report her absences on those dates but she did not submit a claim with supporting documentation regarding her grandmother's death pursuant to the employer's policy in order to receive bereavement leave pay.

Claimant was having a difficult time dealing with the loss of her grandmother so she began seeing a doctor for these medical reasons. Claimant's last day physically worked on the job was June 22, 2016.

Claimant called and reported she would be absent on June 23, 2016 prior to her scheduled shift start time. Claimant was in the hospital for a few hours due to her medical condition.

Claimant was absent on June 24, 2016. Claimant called and reported she would be absent on June 24, 2016 prior to her scheduled shift start time. She was absent due to her medical condition.

Claimant was absent on June 27, 2016. Claimant called and reported she would be absent on June 27, 2016 prior to her scheduled shift start time. She was absent due to her medical condition.

Claimant was absent on June 28, 2016. Claimant called and reported she would be absent on June 28, 2016 prior to her scheduled shift start time. She was absent due to her medical condition.

Claimant was absent on June 29, 2016. Claimant called and reported she would be absent on June 29, 2016 prior to her scheduled shift start time. She was absent due to her medical condition.

Claimant submitted Family and Medical Leave Act ("FMLA") paperwork in order to have June 30, 2016 through July 14, 2016 approved as time off under FMLA through the employer's appropriate third party provider. Claimant was not aware that she was ineligible for FMLA leave because she had not been employed for more than one year.

On the evening of June 29, 2016 claimant was notified that her parents were involved in a serious motorcycle accident. On June 30, 2016 she notified her team lead that she was travelling to get her parents from the hospital. Claimant left on July 1, 2016 to travel with her brother to pick up her parents from the hospital and transport them home because they could not drive. She returned to Iowa with her parents on July 5, 2016.

Her parents needed her help caring for them as they were unable to care for themselves. She tended to her parents on a daily basis.

On July 8, 2016 claimant spoke to her supervisor via text message and they reported that she had already been discharged from employment in June. Claimant asked whether she was still being considered for FMLA leave and she was not. On July 18, 2016 claimant received a certified letter from the employer's third party provider who administers FMLA leave and was

told that she was ineligible for FMLA leave because she had not been employed for more than one year.

Claimant was discharged on June 29, 2016 for failing to report to work for five consecutive work days, pursuant to the employer's written policy. Those work days were June 23, 2016; June 24, 2016; June 27, 2016; June 28, 2016 and June 29, 2016.

Claimant continues to care to her parents on a daily basis. Whether or not the claimant is able to and available for work should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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. Benefits are allowed.

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment.

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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Excessive absences are not considered misconduct unless unexcused. *Id.* at 10. 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. *Gaborit v. Emp't Appeal Bd.*, 743 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. *Id.* at 558.

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*, 350 N.W.2d at 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d at 10 (Iowa 1982). The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins*, 350 N.W.2d at 191 or because it was not "properly reported." *Higgins*, 350 N.W.2d at 191 (Iowa 1984) and *Cosper*, 321 N.W.2d at 10 (Iowa 1982). Excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10 (Iowa 1982).

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. *Higgins*, 350 N.W.2d at 190 (Iowa 1984). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping is not considered excused. *Id.* at 191. Absences due to illness or injury must be properly reported in order to be excused. *Cosper*, 321 N.W.2d at 10-11 (Iowa 1982). Absences in good faith, for good cause, with appropriate notice, are not misconduct. *Id.* at 10. They may be grounds for discharge but not for disqualification of benefits because substantial disregard for the employer's interest is not shown and this is essential to a finding of misconduct. *Id.*

In this case the claimant properly reported all of her absences from June 23, 2016 through June 29, 2016. These absences were all due to her illness. Because claimant's absences were due to illness and were properly reported, these absences are excused. As such, there was no current act of misconduct which claimant committed that would disqualify her from receiving benefits. Benefits are allowed.

DECISION:

The August 8, 2016 (reference 01) unemployment insurance decision denying benefits is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND: The able and available issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn R. Boucher
Administrative Law Judge

Decision Dated and Mailed

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