

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GLORIA PATTERSON
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 17A-UI-10414-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/10/17
Claimant: Appellant (1)

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 October 3, 2017 (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment for job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on October 30, 2017. The claimant, Gloria Patterson, participated personally. Witnesses Onika Carr and Lakinya Woodland participated on behalf of the claimant. The employer, Casey's Marketing Company, participated through witness Debra Holmquist. Claimant's Exhibit A was admitted. 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 part-time as a cook and cashier at the employer's convenience store. She was employed from February 23, 2016 until September 13, 2017. Claimant's job duties included cooking, cleaning, and running the cash register. Ms. Holmquist was claimant's immediate supervisor.

The employer has a written attendance policy stating that excessive absenteeism may result in dismissal. See Exhibit 1. Claimant received a copy of this policy. See Exhibit 1. Claimant chose not to read the policy. The policy further states that if an employee cannot come to work they must notify a manager/supervisor of an absence prior to the normally scheduled work time. See Exhibit 1.

Claimant had received previous discipline regarding tardiness and failing to notify a manager/supervisor that she was going to be absent. See Exhibit 3. Claimant was warned that separation from employment with Casey's general store would occur if she continued to be tardy. See Exhibit 3. Claimant was also instructed to review the attendance policy and follow the rules for timely notification of tardiness or absence. See Exhibit 3.

Claimant was tardy on June 12, 2017 due to oversleeping. No notification was given to the employer regarding her tardiness on this date.

Claimant was absent due to illness on September 3, 2017; however, she did not notify her supervisor of her absence. Claimant was tardy on September 6, 2017 for an unknown reason and did not notify the employer. Claimant was tardy on September 8, 2017 for an unknown reason and did not notify the employer. Claimant was tardy on September 9, 2017 for an unknown reason and did not notify the employer. Claimant was scheduled to work on September 11, 2017 beginning at 12:00 a.m. to 6:00 a.m. Claimant did not show up to work on time and at approximately 12:01 a.m. Ms. Carr telephoned claimant to see where she was. Claimant explained to Ms. Carr that she lost her keys to her vehicle. The two spoke a few minutes later and claimant explained that she would not be to work that day due to losing her keys. Claimant came to work her next shift from 12:00 a.m. on September 13, 2017 and during her shift, Ms. Holmquist discharged claimant for her tardiness and absenteeism in violation of company 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.

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment for job-related 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(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.

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 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); 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.*

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

In this case, the claimant had received three written warnings for her abuse of the attendance policy and failing to notify a supervisor if she was going to be absent from work. The claimant knew that she needed to come to work on time. She understood the attendance policy and knew that she needed to report any absences prior to her scheduled shift start times to a manager/supervisor. It is clear that she knew her job was in jeopardy. Claimant had six unexcused absences in a three-month period. These were not properly reported. Six absences in three months amount to excessive absenteeism.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final incident on September 11, 2017 was not excused as it was due to a transportation issue and she never properly reported the absence. The final absence, in combination with the claimant's history of unexcused absenteeism, amounts to job-related misconduct. Benefits are denied.

DECISION:

The October 3, 2017 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Claimant is denied benefits until such time as she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs