

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUNITA HUSIC
Claimant

WAUKEE COMMUNITY SCHOOL DIST
Employer

APPEAL 16A-UI-12787-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/13/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 30, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on January 10, 2016. The claimant, Sunita Husic, participated. Karmela Lofthus, a Bosnian/English interpreter, assisted with the hearing. The employer, Waukee Community School District, participated through Terry Welker, director of human resources. Employer's Exhibits 1 through 11 were received and admitted into the record.

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 was employed full time, most recently as a head cook in the nutrition department, from October 7, 2010, until November 10, 2016, when she was discharged for absenteeism and for falsifying a reason for her final absence.

On November 9, 2016, claimant told her supervisor, Nate, that she needed to leave work early to care for an ill child. The employer testified that both of claimant's children attend its district, and both children were in school all day on November 9. Claimant admits she lied about one of her children falling ill. She testified that she was upset about her father's death, which occurred in September, and she was unable to continue working that day. Claimant admits that she knew her job was in jeopardy for attendance reasons. She testified she was afraid that if she said she needed to leave because she was upset about her father and not capable of working, Nate would not allow her to leave work.

During the 2016-17 academic year, claimant was absent and used sick leave on August 19, September 1, September 2, and September 6-9. She was absent and used personal leave

days on September 12 and 16, and Welker testified claimant used a day of unpaid leave on September 20. Claimant testified that all of these absences were due to the impending death of her father. According to claimant, she had to accompany her father each time he went to the doctor or took an ambulance to the emergency room. Additionally, as claimant's father does not speak any English, he relied on her to translate for him. Claimant was on approved bereavement leave related to the death of her father from September 23 through September 29. She was absent and used sick leave on October 3, 26, and 27. Claimant was absent from work on November 4, 2016. Claimant believes she was out due to a medical appointment. The employer did not note a reason for her absence that day. Welker testified that as of August 24, 2016, claimant was required to bring in a doctor's note for any sick leave she used. (Exhibit 6) The record does not indicate whether claimant brought in doctor's notes for each of the above-listed sick leave absences. Claimant received warnings related to her absenteeism on August 24, 2016 (Exhibit 6) and October 5, 2016 (Exhibit 4), and she signed both warnings.

Welker testified regarding claimant's absences for the latter portion of the 2015-16 school year. Claimant was absent and used a half-day of sick leave on January 19, 2016. She used full days of sick leave on January 27, February 11, February 26, March 22, March 28, and April 7. Additionally, claimant used a half-day of personal leave on March 4, 2016. She was permitted to take a half-day unpaid leave on April 8, full days of unpaid leave on April 19 and May 3, and a three-quarter day of unpaid leave on May 13. Welker explained the employer's practice regarding unpaid leave. Once an employee exhausts her available sick and/or personal leave days, she may take unpaid leave only with permission. The employee must write out an explanation for her absence and request for paid leave, and management will approve or deny this request. Welker did not have any information about the underlying reasons for any of claimant's absences. Claimant testified that all of her absences during this time period were related to her ailing father.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for excessive, unexcused absenteeism. Benefits are withheld.

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(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.

Excessive absences are not considered misconduct unless unexcused. 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. 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. 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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 employer has established that the claimant was warned that further improperly reported or unexcused absences could result in termination. Claimant's final absence was not properly reported to the employer, as claimant fabricated the reason for her absence. Claimant's numerous past absences were almost entirely attributable to her ailing father. While the administrative law judge understands claimant's father may have depended on her as a care liaison and translator, these absences are related to personal responsibility and are not protected under Iowa Law. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The November 30, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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