

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEFANIE JACKMAN
Claimant

**CENTRAL IOWA HOSPITAL
CORPORATION**
Employer

APPEAL 19A-UI-09652JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/10/19
Claimant: Appellant (1)

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/appellant, Stefanie Jackman, filed an appeal from the December 2, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was scheduled but not held on January 6, 2020. The hearing was rescheduled to January 27, 2020 to allow both parties to review exhibits. After proper notice, a telephone hearing was conducted on January 27, 2020. The claimant participated personally. Faith Brooks was listed as a witness but unavailable when called for the hearing. The employer, Central Iowa Hospital Corporation, participated through Barb Owca, human resources business partner. Sharon Santoro also testified. Wendy Rockey attended as an observer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Exhibits 1-74 were admitted. Exhibit 1 is the Claimant’s exhibit. Exhibits 2-8 are the Employer exhibits, and exhibits 9-74 are the Department’s exhibits/fact-finding packet. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 full-time as a patient care technician in September 2018 and was separated from employment on November 12, 2019, when she was discharged for excessive absenteeism after warning.

When the claimant was hired, she was trained on employer rules and procedures, including the attendance policy. The employer requires an employee provide a two-hour notice if they are unable to work a shift, and tracks absences on an occurrence system. The policy is a “no fault” policy meaning the reason a person is late or absent is not considered when determining if they will receive an occurrence for unexcused absences. The employer’s policy provides that seven unexcused absences in six-month period can warrant discharge.

The undisputed evidence is the claimant was absent from work on November 11, 2019, due to car issues (Department Exhibit 12). Originally, she called the employer to report she would be late. After several hours passed, she did not show up to work and did not respond to the employer’s attempt to reach her. She did not update the employer to state she would not be in because she was distracted.

Prior to the final incident, the claimant received warnings for her attendance on August 1, 2019, October 14, 2019 and November 8, 2019 (Employer Exhibits 2-8, 25, 26, 27). The claimant had been previously absent on February 18, March 18, 27, May 6, 7, July 10, October 22, and 23, 2019. The claimant had been tardy July 16, 17, 27, 31, September 5, 9, 17, 19, October 4, 9, 10, 11, 14, 15, 22, 23, 24, 28, November 5, 7, and 8, 2019. The employer had allowed a seven-minute grace period on tardies until August when management met with staff and stated moving forward, staff must be clocked in at the time listed on the schedule and no longer allowed a seven-minute grace period.

The claimant opined she was treated unfairly and differently than other employees, and singled out (Claimant Exhibit 1, Department Exhibits 13-15). She also acknowledged a history of transportation and car issues led to majority of her tardies. She was subsequently discharged.

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.

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, 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.

In this case, the claimant had approximately nine absences and twenty-one tardies between February-November 2019. The majority of the absence infractions were due to repeated transportation issues. Transportation issues are not considered an excused absence, for purposes of determining unemployment insurance benefit eligibility. *Higgins v. Iowa Dep’t of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984). The claimant’s final absence on November 11, 2019, occurred three days after she received a third written warning for her attendance, and was due to transportation issues. Reasonably, the claimant knew or should have known on November 11, 2019 that if she failed to come to work, on time, she may lose her job. Further, the claimant reasonably knew based upon her history that she needed to have back up plans for transportation if her vehicle broke down, as it had before.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive.

Although claimant asserts she was treated more harshly than co-workers, no credible evidence was presented that her coworkers had the same attendance record of excessive tardiness as the claimant. Therefore, the situations are not comparable.

Based on the evidence presented, the employer has established the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated the December 2, 2019 (reference 01) is affirmed. The 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.

Jennifer L. Beckman
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Decision Dated and Mailed

jlb/rvs