

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KELLIE A SCHAEFER**  
Claimant

**AMERICAN HOME SHIELD CORP**  
Employer

**APPEAL 16A-UI-04438-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/20/16**  
**Claimant: Appellant (2)**

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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 April 8, 2016, (reference 02) unemployment insurance decision that denied benefits based upon her discharge from employment for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on April 29, 2016. The claimant, Kellie A Schaefer, participated personally. The employer participated through Hearing Representative Jacqueline Jones and Manager of Human Resources Amy Platt. Employer's Exhibits 1 through 4 were admitted.

**ISSUE:**

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 a customer service representative. She was employed from May 18, 2015 until August 31, 2015. Her immediate supervisor was Karen Kennebeck.

The employer has a policy in place regarding absenteeism where the employees are assessed points and are discharged after a certain number of points are reached. See Exhibit 1. The claimant was discharged for absenteeism based on this point system when she accumulated 24 points. See Exhibit 2.

Claimant was absent on the following dates: June 1, 2015 (overslept and was tardy by thirty minutes); July 1, 2015 (left early due to illness); July 2, 2015 (left early due to illness); July 10, 2015 (overslept and was tardy by one hour); July 15, 2015; (ill all day); July 28, 2015 (was tardy four – fifteen minutes); August 3, 2015 (left early due to illness); August 14, 2015 (left early due to illness); August 21, 2015 (left early to see doctor); August 24, 2015 (tardy thirty minutes); August 28, 2015 (gone all day due to doctor's appointment in Omaha, Nebraska). See

Exhibit 4. Claimant properly reported her absences on all occasions except July 10, 2015; July 28, 2015; and August 24, 2015.

**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.

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 the 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.

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. Iowa Admin. Code r. 871-24.32(7); *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. Second, the absences must be unexcused. *Cosper*, 321 N.W.2d at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused because it was not for "reasonable grounds," *Higgins*, 350 N.W.2d at 191. It can also be unexcused because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d 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. *Higgins*, 350 N.W.2d at 190. 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 at 10-11. 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).

Further, there must be a current act of misconduct in order for claimant to be disqualified from receiving benefits.

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 current act of misconduct that claimant was discharged for was her absence on August 28, 2015. Claimant had properly notified the employer that she needed to see a specialist doctor regarding her medical condition. The doctor was located approximately one hundred miles away. Claimant notified her supervisor several days in advance of the doctor's appointment. The employer knew the claimant was ill and needed to get this medical test conducted in order to determine a diagnosis of what her ailment was. Claimant's supervisor gave her permission to attend her doctor's appointment. Claimant raised concerns throughout her employment regarding her absences due to medical appointments and illness. Her supervisor instructed her to complete the Americans with Disabilities Act ("ADA") paperwork to have her absences be excused due to her heart condition. She completed the paperwork but she was denied coverage on the date she was discharged. Under the employer's own point system the claimant should have been discharged on August 14, 2015, however, the employer was waiting to see if claimant would qualify under its ADA policy and did not discharge her at that time.

It was not until August 31, 2015 that claimant was informed that she did not qualify under the ADA to have her previous absences regarded as excused. At this point there was nothing that claimant could do because she had already taken the time off work to attend her medical appointments.

In order for absenteeism to be misconduct the employer must establish an intentional disregard of the duty owed by the claimant to the employer. In this case claimant notified her employer well in advance of her doctor appointments and was these doctor appointments were necessary in order to diagnosis what was making her ill. Claimant did not choose to be ill. This was not a personal problem of her own making and was not elective. These absences for illness and doctor appointments were in good faith, for good cause, and with appropriate notice. Claimant's absences resulting from sickness, illness, or her necessary doctor's appointments in order to diagnose her illness are not volitional and do not amount to misconduct. See Iowa Admin. Code r. 871-24.32(7); see *Floyd v. Iowa Dep't of Job Serv.*, 338 N.W.2d 536 (Iowa App. 1983).

The employer has failed to establish that the claimant was discharged for a current act of job-related misconduct which would disqualify her from receiving benefits. Benefits are allowed.

**DECISION:**

The April 8, 2016, (reference 02) 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 provided claimant is otherwise eligible.

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Dawn R. Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/css