

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUZ M RATH

Claimant

APPEAL 17A-UI-07791-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 07/09/17

Claimant: Respondent (2)

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

Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 24, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was not discharged for a current act of misconduct. The parties were properly notified of the hearing. A telephone hearing was held on August 18, 2017. The claimant, Luz M. Rath, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Swift Pork Company, participated through Nicholas Aguirre, HR Manager. Employer's Exhibit A was received and admitted into the record. The administrative law judge took official notice of the administrative record and the fact-finding documentation.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

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 general laborer, from November 30, 2009, until May 23, 2017, when she was discharged. Claimant reported to work on February 4, 2017, and then she was absent for several weeks due to a medical issue and vacation. Claimant returned to work on February 20, 2017. She presented a doctor's note stating she was released to return to work effective December 13, 2017. Claimant notified the employer at that time that the note had a date error and should have stated she was released effective February 13, 2017. (Exhibit A, page 25) Claimant stated she would bring in updated documentation when she received it, and the employer reminded her of her responsibility to call in each day she needed to miss work.

Following February 20, 2017, claimant was absent for approximately thirteen weeks. She called in sporadically during this time period. (Exhibit A, pages 14 through 20) Claimant reported back to work on May 23, 2017, with a corrected doctor's note related to her absence in February. According to this note, claimant was released to return to work effective February 13, 2017. (Exhibit A, page 21) Claimant did not offer any reasons or documentation explaining why she had been absent for thirteen weeks. Claimant had been warned for her attendance in the past. The employer allows each employee to accrue nine attendance points before she is discharged for points. At the time of claimant's discharge, she had accrued 116.5 attendance points.

The administrative record shows that claimant has not received any benefits since filing her unemployment insurance claim with an effective date of July 9, 2017. Additionally, claimant's unemployment claim is currently locked on grounds unrelated to this separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment 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 "[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. 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 of employment and the final absence was not properly reported or excused. Any reasonable employee would know that her job would be placed in jeopardy for the pattern of absenteeism without notification that claimant displayed during 2017. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld. As claimant has not received any benefits since filing her claim, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The July 24, 2017 (reference 01) unemployment insurance decision is reversed. 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. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/rvs