

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SUSAN B BRATTMILLER**  
Claimant

**SPARBOE FARMS INC**  
Employer

**APPEAL 16A-UI-08281-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/03/16**  
**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 July 20, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on Tuesday, August 30, 2016. The claimant, Susan B. Brattmiller, participated. Witnesses Thomas J. Williamson, Cody Pierson, and Dave Allbee testified on claimant's behalf. The employer, Sparboe Farms, Inc., participated through Amanda Steffen, human resource generalist. Claimant's Exhibits A and B and Employer's Exhibits 1 through 8 were received and admitted into the record without objection.

**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 QA and SQS practitioner, from March 13, 2013, until June 23, 2016, when she was discharged due to absenteeism.

Claimant's final absence occurred on June 22, 2016, when she missed work due to food poisoning. Claimant was a no-call/no-show that day. According to claimant's unrefuted testimony, she attempted to call in and report that she would not be at work due to illness, but the message line was full and she could not leave a message. She ended up falling asleep and never attempted to call again. When claimant reported to work the following day, she was brought into the office and questioned about whether her sister (a former employee) would have any reason to be on the premises. During either this or a subsequent conversation, claimant was discharged. While claimant was told she was being discharged due to attendance, she later heard that she had been discharged because she made too much money.

Under the employer's attendance policy, an employee will be discharged after accruing six attendance points. Claimant, Williamson, and Pierson all testified that this policy is not

consistently enforced. Pierson explained that due to staffing shortages, employees are sometimes allowed to accrue far more than six points without being discharged.

In the months leading up to her discharge, claimant had several late arrivals to work due to oversleeping. Additionally, on one occasion, claimant took ten minutes longer for her lunch break than was permitted. Claimant testified that this happened because she got interrupted while returning to work by a coworker with a work matter. Claimant reported this to Morgan, and Morgan was supposed to fix her timecard. Claimant received a warning due to her attendance on June 3, 2016. (Exhibit 1)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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(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 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).

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. An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

Here, the employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant testified that she was ill on June 22. She attempted to call in and report her absence, but the message line was full. There is no evidence in the record to contradict claimant's testimony. Because claimant's last absence was related to illness that she followed the procedure to properly report, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The July 20, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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