

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATJA W CASE

Claimant

MASON CITY CLINIC PC

Employer

APPEAL 20A-UI-04652-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20

Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Katja Case (claimant) appealed a representative's May 13, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Mason City Clinic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 12, 2020. The claimant was represented by Bryce Holstad, Attorney at Law, and participated personally. The employer was represented by Emily Pontius, Attorney at Law, and participated by Jodi Draper, Chief Financial Officer, and Dana Young, Administrator.

The employer offered and Exhibits One, Two, Three, Four, and Five were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUES:

The issues include whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 3, 2019, as a full-time accounting clerk. She worked from 7:30 a.m. to 4:30 p.m., Monday through Friday. She signed for receipt of the employer's handbook. The claimant had been diagnosed with severe anxiety and panic disorder, depression, and attention deficit disorder. She had been under psychiatric treatment since 2012. She was prescribed Abilify, Lexapro, Adderall, Vivax and Temazepam. Her medications made it difficult for her to sleep and wake up in the morning. Her condition also caused, worry, shaking and agoraphobia.

On November 4, 2019, the employer issued the claimant a verbal warning. It reduced the verbal warning to writing on November 11, 2019. The warning was issued for seven tardies and three absences. The claimant reported the three medical absences as soon as her medical condition would allow. The claimant's medications caused the claimant to oversleep and be

tardy. The claimant explained her medical issues to the employer. The warning also mentioned issues with excessive use of her cellphone and dress code. The employer notified the claimant that further infractions could result in termination from employment.

On Friday, November 22, 2019, the claimant overslept due to her medical condition. The claimant reported the tardiness at 8:16 a.m., as soon as her medical condition would allow. After reporting that she would be at work shortly, she had an anxiety attack and was transported by ambulance to the hospital. The employer did not know why the claimant was not at work and the claimant was not medically able to report her condition on November 22, 2019. The claimant provided the employer with a doctor's note on Monday, November 25, 2019. On December 4, 2019, the employer issued the claimant a written warning for the absence. The employer noted that the claimant had not been tardy since November 4, 2019. It decided not to terminate her but notified the claimant that further infractions could result in termination from employment.

On December 19, 2019, the claimant did not appear for work at 7:30 a.m. The claimant overslept due to her medical condition. At 9:04 a.m., she sent a text to the employer stating, "I just woke up and I have a sick little one to deal with. I'll be in I promise". She does not remember this text. The claimant clocked in to work at 12:00 p.m. From approximately 1:45 p.m. to 2:17 p.m. the claimant was seen by at least four employees lying on the couch in the work library with her eyes closed and wearing her winter coat. The claimant could not stay awake due to her medications.

After 2:17 p.m. on December 19, 2019, the employer met with the claimant and reviewed her history of absenteeism and the employer's needs. The employer terminated her for vaping at work in October 2019, excessive personal calls prior to November 4, 2019, sleeping at work on December 19, 2019, and tardiness on December 19, 2019.

The claimant's doctor did not restrict the claimant's ability to work except for November 19, 2019. The claimant feels that her prescription medication has been adjusted and she is able and available for work.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount was determined to be \$375.00. The claimant has received no unemployment insurance benefits since her separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. *Roberts v. Iowa Department of Job Service*, 356 N.W.2d 218 (Iowa 1984). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge.

The last incident of absence was an improperly reported illness. The claimant's absence does not amount to job misconduct because the claimant could not properly report her absence due to mental incapacity. Clearly, the claimant was not well on December 19, 2019. Her behavior was not intentional. Four employees saw the claimant sleeping in her winter coat during work time. Two of those employees knew she had mental health issues and had recently been to the hospital with those issues. The claimant's behavior on December 19, 2019, did not move the employer to seek care for her or call her emergency contact.

The employer also terminated the claimant for events that occurred prior to November 4, 2019. These incidents are too remote from the time of termination, December 19, 2019. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

Iowa Admin. Code r. 871-24.23(1) provides:

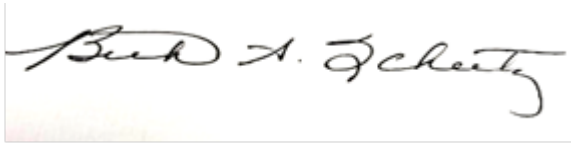
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant's physician has not restricted the claimant's ability to work after April 5, 2020. She is eligible to receive unemployment insurance benefits as of April 5, 2020.

DECISION:

The representative's May 13, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible. The claimant is able and available for work.

A handwritten signature in black ink, reading "Beth A. Scheetz". The signature is written in a cursive style with a horizontal line underneath it.

Beth A. Scheetz
Administrative Law Judge

June 25, 2020
Decision Dated and Mailed

bas/scn