

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARIA PAYTON
Claimant

APPEAL NO: 14A-UI-04170-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FERGUSON MANUFACTURING CO INC
Employer

OC: 03/23/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 14, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 9, 2014. The claimant participated in the hearing. Todd Ferguson, President, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time machine operator for Ferguson Manufacturing from February 4, 2013 to March 11, 2014. She was discharged from employment due to excessive unexcused absenteeism.

The claimant requested vacation time to go to the Philippines from February 17 through March 10, 2014, but the employer was too busy at that time to allow her to take three weeks off and consequently approved her for the two weeks ending March 3, 2014. The claimant worked approximately two hours February 10, 2014, and then left saying she did not feel well. She did not tell her supervisor she was leaving and left when he was on his lunch break. She was then absent due to properly reported illness February 11, 2014, and told the employer she had a doctor's excuse covering the remainder of that week. The employer decided to terminate her employment following that incident. The employer attempted to call her several times before she left for the Philippines but was unable to reach her to notify her she was discharged.

The employer's attendance policy is not point or occurrence based and it tries to work with employees with attendance or other issues. The employer had told the claimant in the past she needed to be at work, specifically on one occasion when she was absent for a few days because she was moving, but at other times too, although none of those conversations were documented and the claimant was not told she was receiving verbal warnings. There is no evidence the claimant received any written warnings or was told her job was in jeopardy.

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.

Iowa Code section 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 job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The employer did not have documented dates or reasons for the claimant's absences. Consequently, with the exception of the February 11 through February 14, 2014, dates when the claimant was absent due to properly reported illness accompanied by a doctor's note, the employer could not any specific information about the claimant's absences. There were several day when she did not work 45 hours during the week, but no way to know the dates, length or reasons for her absences. Additionally, if the employer was concerned about the claimant's attendance it should have formally warned her, either a verbal warning in writing signed by the claimant or a written warning signed by the claimant and those warnings should have stated the consequences of the claimant's actions should they continue.

After the claimant was absent due to illness February 11 through February 14, 2014, she took her preapproved vacation time to travel to the Philippines for two weeks and her employment was terminated when she returned from that trip because the employer had been unable to reach her prior to her trip so it could notify her that her employment was terminated. Under these circumstances, the administrative law judge, while not condoning the claimant's history of absenteeism, must conclude that because the final absence was related to properly reported illness, there were no documented dates of unexcused absences and the employer did not issue the claimant any formal warnings, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

DECISION:

The April 14, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css