

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MATTHEW B MORRIS**

Claimant

**APPEAL 15R-UI-10114-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PATRICK CUDAHY INCORPORATED**

Employer

**OC: 06/21/15**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 10, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 29, 2015. Claimant participated. Employer did not participate.

**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 in maintenance from January 2014, and was separated from employment on June 24, 2015, when he was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned for accumulating so many points, and will be discharged upon receiving fourteen points. Claimant was aware of the employer's policy. If employees are going to be absent, they are to call an hour before their shift starts. Employees do not have to provide a doctor's note.

The final incident occurred when claimant was absent from his shift a couple of weeks before June 24, 2015. Claimant was absent because he was sick. Claimant called the employer prior to his shift per the employer's call-in procedure. Claimant properly reported the illness to the employer.

Claimant was last warned a couple of days prior to his last absence. Claimant had a meeting with the employer regarding his prior absences. The employer wanted to know why claimant had been absent so much. Claimant told the employer he had missed work because his dad was in the hospital and claimant was spending time with him. Claimant was also absent from work because of his father's funeral. Claimant also was absent a few days because of a

miscarriage of his child. The employer told claimant that it was okay and not to worry about his absences. The employer told claimant they were going to get Family and Medical Leave Act (FMLA) leave paperwork filed for claimant to cover his absences. When claimant was called into the office on June 24, 2015, he thought it was about the FMLA paperwork.

### 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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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. 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

An employer’s attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence.

Claimant had been absent from work on multiple occasions prior to his last absence. However, prior to his last absence, claimant met with the employer to discuss his absences. Claimant explained the reason behind the absences and was told not to worry about them. A couple of days after this meeting, claimant had his last absence. Claimant was sick and was unable to work; however, claimant followed the employer’s procedures for reporting this absence. Claimant properly reported his final absence, which was because of an illness.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Because his last absence was related to properly reported illness or other reasonable grounds, 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, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

#### **DECISION:**

The July 10, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/css