

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TAMI L FOWLER**  
Claimant

**SNAP-ON LOGISTICS COMPANY**  
Employer

**APPEAL 18A-UI-10312-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/24/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tami Fowler, Claimant, filed an appeal from the October 2, 2018 (reference 02) unemployment insurance decision that denied benefits because she was discharged from work with Snap-On Logistics Company due to excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on October 30, 2018 at 9:00 a.m. Claimant participated. Employer participated through Jodie Rath, Human Resources Manager, and Wayne Gifford, Shop Committee Chairman. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to 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 as a form welder from February 9, 2015 until her employment with Snap-On Logistics Company ended on September 18, 2018. (Claimant Testimony) Claimant's direct supervisor was Jeannie Householder, Supervisor in Packing. (Claimant Testimony) Claimant's schedule was Monday through Friday from 7:00 a.m. until 3:00 p.m. with mandatory over-time. (Claimant Testimony)

Employer has a policy regarding absenteeism which outlines the number of absences an employee can have in a rolling three-month period and a progressive discipline system. (Rath Testimony) The policy also states that employees must notify the employer personally of an absence prior to the beginning of their shift. (Rath Testimony) The policy is included in the employee handbook, of which claimant received a copy. (Rath Testimony; Claimant Testimony)

Between January 1, 2018 and September 18, 2018, claimant was tardy for or absent from work on at least 45 occasions. (Claimant Testimony; Rath Testimony) Claimant received a verbal warning regarding absenteeism and tardiness on March 8, 2018 and a written warning on May 14, 2018. (Claimant Testimony) On June 1, 2018, claimant received a three-day suspension for habitual absenteeism and tardiness, which claimant served from June 6, 2018

through June 9, 2018. (Claimant Testimony) Claimant was told that future absences may result in termination of her employment and knew that her job was in jeopardy. (Claimant Testimony)

Following the three-day suspension, claimant had the following absences:

- August 16, 2018, claimant was three and a half hours tardy to work for personal reasons (Claimant Testimony); claimant notified employer of her tardiness an hour and a half after her shift began (Rath Testimony).
- August 18, 2018, claimant was absent for an entire shift (Claimant Testimony); claimant did not notify employer (Rath Testimony).
- September 5, 2018, claimant was two hours tardy to work and did not notify employer. (Rath Testimony)
- September 18, 2018, claimant was tardy because she overslept. (Claimant Testimony) Claimant was scheduled to work at 7:00 a.m. and notified employer of her tardiness at 7:10 a.m. (Claimant Testimony)

On September 18, 2018, employer terminated claimant's employment due to absenteeism. (Claimant Testimony)

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

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 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(1)(a) provides:

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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 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, 11 (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*, 321 N.W.2d at 9; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191.

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929\*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

Claimant accrued four absences or incidents of tardiness between the date of her suspension and discharge. Regardless of the reason for the absences, none of them was properly reported to employer. Therefore, claimant's four absences accrued between August 16, 2018 and September 18, 2018 are unexcused. Claimant accrued these absences in approximately one month and after receiving two warnings and a suspension for absenteeism. Claimant's unexcused absenteeism is excessive and constitutes job-related misconduct. Claimant is disqualified for benefits.

**DECISION:**

The October 2, 2018 (reference 02) unemployment insurance decision is affirmed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Decision Dated and Mailed

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