

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA PAL
Claimant

REMBRANDT ENTERPRISES INC
Employer

APPEAL 20A-UI-02202-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/24/19
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/appellant, Rebecca Pal, filed an appeal from the March 4, 2020 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 24, 2020. The claimant participated personally and with a Nuer interpreter with CTS Language Link. The employer, Rembrandt Enterprises Inc., participated through Ann Sassman, human resources generalist.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as a yellow package dryer and was separated from employment on February 14, 2020, when she was discharged for “pointing out” by having excessive absences.

The employer has a no-fault attendance policy which designates point values to attendance infractions, regardless of reason for the infraction. After applying progressive discipline, an employee is discharged at the receipt of nine points in a rolling twelve month period. The claimant was made aware of the employer policies at the time of hire. The claimant was aware of the employer’s policy which required she notify her immediate supervisor one hour prior to shift start time if she was going to be absent.

The employer assessed the following points:

August 31, 2019	Left early	1 point
September 10, 2019	Left early	1 point
September 14, 2019	Late (more than 3 hours)	1 point
December 8, 12, 16, 17, 21, 2019	Late (4-18 minutes)	2.5
December 20, 2019	Absent	1 point
December 22, 2019	Tardy	½ point
January 3, 2020	Absent	1 point
January 19, 2020	Tardy	½ point
February 14, 2020	Tardy	½ point

The claimant stated her absences included leaving sick with permission, when her car went into a ditch, once leaving early due to childcare, being absent after hitting a bicyclist with her car, and for having to pick her children up from the bus when it was running late. She was given warnings on October 9, 2019 and December 20, 2019, and told to sign. The claimant acknowledged she does not read English during the hearing.

The final incident occurred on February 14, 2020, the claimant's car would not start. She called human resources and she called her old supervisor. She arrived to work approximately fifteen minutes late. She went to speak to her old supervisor, who said he wasn't responsible for her anymore. When she told human resources, she had tried to call, they would not accept it as notification. She was then fired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's discharge from employment was not due to job-related misconduct according to Iowa law. Benefits are allowed.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a.

Iowa Admin. Code r. 871-24.32 provides, in relevant part:

Discharge for misconduct.

(1) Definition.

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.

...

(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 requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be unexcused. *Cosper v. IDJS*, 321 N.W.2d 6, 10 (Iowa 1982). Second, the unexcused absences must be excessive. *Sallis v. Employment Appeal Bd*, 437 N.W.2d 895, 897 (Iowa 1989).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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. Absences due to properly reported illness are excused, 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). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

The second step in the analysis is to determine whether the unexcused absences were excessive. 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. *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). Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable.

The administrative law judge is also persuaded that the claimant's absence due to her car not starting should be considered excused as well, because even though the claimant called human resources and her prior manager, and not her new manager, she did notify the employer as soon as she reasonably could of the absence. She had never experienced transportation issues in the past, made it to work within 15 minutes of her shift. She made a good faith effort, in light of a language barrier, to communicate with her employer and could not have anticipated that day her car would not start on an Iowa winter day. Because the absence was due to other "reasonable grounds" and reported as soon as possible, the administrative law judge concludes the claimant's final absence would be considered excused for purposes of determining unemployment insurance benefits eligibility.

Based on the evidence presented, the administrative law judge concludes the employer has not established that the claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the 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.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

DECISION:

The unemployment insurance decision dated March 4, 2020, (reference 03) is reversed. The claimant was discharged but not for disqualifying job-related misconduct. Benefits are allowed, provided she is otherwise eligible.



Jennifer L. Beckman
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April 27, 2020
Decision Dated and Mailed

jlb/scn