

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KIARA DAVIS
Claimant

APAC CUSTOMER SERVICES
Employer

APPEAL 15A-UI-01362-KCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/11/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 23, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2015. The claimant participated. The employer participated through Carmelita Stevens, APAC supervisor, and Turkessa Newsone. No documents were admitted into evidence.

ISSUE:

Was the claimant discharged for work-related, disqualifying 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 customer service representative. She began working for the employer in March 2013 and was separated from employment on January 9, 2015.

The claimant called in sick to her employer on January 5 and January 6, 2015. She obtained physician's notes for each day. She arrived late at work on January 7, 2015 due to needing to obtain the second physician's note regarding her January 6, 2015 absence. The claimant received a written warning indicating that under the employer's point system for attendance, she was close to being discharged and any further tardiness, early leaving, or absence would result in termination under the employer's attendance policy. She also understood she would have a point "roll off" a few days later and that would put her job out of jeopardy.

The employer had provided an overview of the attendance policy at orientation. The policy was available at the worksite. The employer provided no documents at hearing.

On January 9, 2015 the claimant took her young son to a new daycare provider that she had arranged. When she arrived at the daycare provider, she was informed that the required documents had not yet been approved so they could not accept her son that morning after all. She took her son to another daycare provider, at some distance, because she had no one else who could take him on such short notice. She is a single mother without family members

nearby. She arrived 18 minutes late to work. The employer knew about her family situation. She informed her supervisor of what had just occurred. The supervisor advised her that her employment was terminated due to reaching a specified number of attendance points under the employer's policy.

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 § 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. *Casper 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. *Casper* 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." *Casper* 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. *Higgins, supra*.

The claimant had two absences for medical reasons that are not considered unexcused for the purposes of eligibility for unemployment insurance benefits. The claimant was late the next workday, after her properly reported illness, due to her need to obtain the required medical documentation for the employer. On another date, she was late when a new daycare arrangement suddenly became unavailable. As the child's sole physical custodian, she had to obtain alternative arrangements at the last minute. The claimant's tardiness for two scheduled work dates, one for obtaining medical documentation, and one for a suddenly arising child-care issue, while unexcused, are not considered excessive. Benefits are allowed.

DECISION:

The January 23, 2015 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/can