

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORINA P CAMPBELL
Claimant

APPEAL 19R-UI-06194-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILTON PRECISION STEEL
Employer

**OC: 04/28/19
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

On May 24, 2019, the claimant filed an appeal from the May 21, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. A telephone hearing was scheduled for June 19, 2019. Claimant failed to register for the hearing and the appeal was dismissed. Claimant filed an appeal with the Employment Appeal Board. On August 5, 2019, the Employment Appeal Board remanded the case to the Unemployment Insurance Appeals Bureau for a hearing. The parties were properly notified about the hearing. A hearing was held on August 27, 2019. Claimant participated. Employer participated through human resource employee Greg Gonzalez. Employer's Exhibit 1 was received.

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 began working for employer on October 8, 2018. Claimant last worked as a full-time general laborer. Claimant was separated from employment on April 29, 2019, when she was terminated.

Employer has an attendance policy stating that an employee will be given a verbal warning after accruing 48 attendance points, a written warning after accruing 64 attendance points, and terminated after accruing 80 attendance points. Employer assigns one point each time an employee misses a fraction of one hour of work. Employer excuses absences for illness only when a doctor's note is provided. The policy requires employees to notify employer of a potential absence at least 30 minutes before or after the start of the scheduled shift. Claimant was aware of the policy.

On October 12, 2018, claimant accrued one attendance point. On October 31, 2018, claimant accrued two attendance points.

On November 15, 2018, claimant accrued three attendance points. On November 27, 2018, claimant accrued eight attendance points. On November 28, 2018, claimant accrued eight attendance points.

On December 4, 2018, claimant accrued four attendance points. On December 6, 2018, claimant accrued eight attendance points. On December 11, 2018, claimant accrued two attendance points. On December 15, 2018, claimant accrued one attendance point. On December 19, 2018, claimant accrued two attendance points. On December 20, 2018, claimant accrued four attendance points. On December 21, 2018, claimant accrued one attendance point.

On January 23, 2019, claimant accrued three attendance points. On January 30, 2019, employer gave claimant a verbal warning for her attendance points.

On February 11, 2019, claimant accrued five attendance points. On February 19, 2019, claimant accrued five attendance points. On February 20, 2019, claimant accrued eight attendance points.

On March 5, 2019, employer gave claimant a written warning for her attendance points. On March 13, 2019, claimant accrued one attendance point. On March 19, 2019, claimant accrued two attendance points. On March 26, 2019, claimant accrued one attendance point.

On April 3, 2019, claimant accrued one attendance point. On April 4, 2019, claimant accrued one attendance point. On April 9, 2019, claimant accrued one attendance point. On April 18, 2019, claimant accrued one attendance point. On April 23, 2019, claimant accrued one attendance point.

On April 26, 2019, claimant accrued eight attendance points. Claimant missed work because she was out of town and her car broke down. Claimant was scheduled to work at 3:00 p.m., but did not get back into town until 10:00 p.m. Claimant went into work at that time and clocked in and clocked back out, but did not work. There was approximately one hour in the shift remaining. Claimant was in contact with her supervisor by text message during the day of April 26, 2019. Claimant was concerned she was going to be terminated because she knew she has accrued many attendance points.

On April 29, 2019, claimant's supervisor notified her via text message that her employment had been terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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).

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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct, 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). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. In this case, claimant's last absence was unexcused as it was due to an issue of personal responsibility. Claimant asserts employer never gave her a written or verbal warning regarding her attendance. Even if this were true, claimant testified she knew that her last absence would probably result in termination as she had been accruing an excessive amount of attendance points.

In summary, claimant was aware that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are denied.

DECISION:

The May 21, 2019, (reference 01), decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/rvs