

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA A HAMMEL
Claimant

APPEAL 18A-UI-07143-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING CO
Employer

**OC: 05/20/18
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the June 22, 2018, (reference 03) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 25, 2018. Claimant participated. Employer participated through area supervisor Ron Niermeyer and UIC lead Zontel McCann. Official notice was taken of the administrative record, including documents submitted for the fact finding interview. Employer's Exhibits 1 and 2 were received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 5, 2018. Claimant last worked as a part-time store employee. Claimant was separated from employment on May 25, 2018, when she was terminated.

Employer has an attendance policy. The policy states that two unscheduled absences in one year will result in termination. An unscheduled absence occurs when the employee does not give the employer at least 24 hours advance notice of the absence. In any event, employees are required to call the immediate manager/supervisor as far in advance as possible when absent from scheduled working hours. Claimant was aware of the policy.

Claimant was absent from work from April 25 through 28, 2018, due to a hospitalization. The absence was properly reported, but not 24 hours prior to the shift commencing.

Claimant was absent on May 13, 2018, and did not properly report the absence.

On May 24, 2018, claimant was scheduled to work from 3:00 p.m. until 11:00 p.m. Claimant called her supervisor one hour before her shift stating she was vomiting and could not keep anything down and was going to the hospital. Claimant stated she tried to find other employees to work for her, but was unable to do so. Claimant went to the hospital. Claimant sent a text message to her supervisor stating she was diagnosed with heat exhaustion and was excused from work through Friday, May 25, 2018.

Employer then terminated claimant's employment for excessive absenteeism.

Claimant had never been previously disciplined for attendance issues.

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.

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 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). 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's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant's last absence was due to illness and was properly reported, as far as unscheduled absences go. Because her 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, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

Because claimant is qualified to receive benefits based on this separation from employment, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The June 22, 2018, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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