IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CAROLINE J MONSON Claimant **IOWA STATE ASSOC OF COUNTIES** Employer	**APPEAL 17A-UI-05744-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/14/17** **Claimant: Appellant (1)**

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 filed an appeal from the June 1, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 16, 2017. Claimant participated with her spouse Robert Monson. Employer participated through chief deputy sheriff Doug Lande, human resource administrator Leslie Cox, jail lieutenant Heather Renshaw-Roll, jail sargents Heidi McKibben and Adam Howard, jailer Rachel Perez. Sheriff Chad Leonard was not available and did not participate. Claimant's Exhibit A was received. Employer's Exhibit 1 (E1-E30) was received. The administrative law judge took official notice of the administrative record, including fact-finding documents.

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 was employed as a full-time correctional officer for Dallas County. Claimant went from full-time to part-time in February 17, 2017 at her request.[1] Her separation from employment occurred on May 10, 2017, when she was discharged. She received the termination letter on May 15. (Employer's Exhibit 1 p. E1, Claimant's Exhibit A p. 6) Her last day of work was Thursday, May 4, 2017. She was out of the country on vacation from Sunday, May 7 through May 14, 2017, and was planning to return to work May 16. (Admin. Record fact-finding interview notes)

On April 11, 2017, a mandatory self-defense and handcuffing-techniques training session was scheduled for 9 a.m. to noon on Saturday, May 6, 2017. Claimant was listed as a required attendee. (Employer's Exhibit 1 p. E3, E4) A reminder was e-mailed May 1, 2017. (Employer's Exhibit 1 p. E24, E25) On Friday, May 5, claimant and her spouse had an evening party for her real estate business at their home. They talked about "shutting down the party early" because

[1] The part-time employment began during the base period lag quarter and is not included in determining whether claimant is monetarily eligible for benefits.

of his work schedule the next day. Robert Monson recalled the guests left by 10 p.m. when he went to bed. Claimant told Ray she closed her home to guests "at 9ish." (Claimant's Exhibit 5)

Claimant missed the mandatory training on Saturday, May 6. At hearing claimant recalled she could "barely get out of bed." She texted Renshaw-Roll, who was off duty, twelve minutes prior to the training that she was en route but would not attend because she was ill, suspecting food poisoning. (Employer's Exhibit 1 p. E26) Claimant should have reported to the supervisor on duty. Renshaw-Roll notified Lande when she saw the message later in the day, but did not reply to claimant. At that point claimant estimated she was 30 to 40 minutes away from work and would not have arrived until at least 9:30 a.m. Claimant's spouse Robert Monson left for work that morning at 6 a.m. noting she was "out of it" when he left and she had vomited during the night. (Claimant's Exhibit A p. 3) She did not have prescription medication and did not take over-the-counter medicine. Claimant did notify Sargent Johnson, supervisor on duty for the scheduled shift on May 6 from 3 p.m. to 11 p.m., that she would not report due to illness. A medical excuse should have been presented directly to a supervisor, Lande or Renshaw-Roll. Claimant did not see a doctor because of her illness that day and did not present information to the employer while employed, about a diagnosis of irritable bowel syndrome (IBS) or ask for intermittent FMLA. She saw CMA Michelle Bunce on May 1, 2017, who wrote a return to work note for May 6, dated May 23, 2017, mentioning IBS. (Claimant's Exhibit A p. 2)

On Sunday, May 7 McKibben sent an e-mail to Renshaw-Roll about what she had heard from "multiple staff members," specifically Michael [Sandquist] and Rachel [Perez], hearing claimant say she was not going to go to the training. McKibben referenced a few staff members who were irriated about it because they had to change plans to attend. (Employer's Exhibit 1 p. E29) During the May 30 fact-finding interview, claimant denied telling anyone she did not intend to attend the training so Renshaw-Roll asked Chris Long, who did not participate at hearing, to send her an e-mail about claimant telling him she was not going to the training. He replied she had told him "she planned to [go], (sic) the day before at her party we were joking around about how we'll both be suffering" because they expected to be hung over. (Claimant's Exhibit A p. 8) Statements were not required and those who were willing to give statements were not told what to write. Clifford Long and Jessica Levelle opted not to give Renshaw-Roll statements. Renshaw-Roll asked the same of Perez who wrote that claimant was not dressed for work and relieved her late in the control room one morning that week, and invited her to the party. Perez reminded claimant of the self-defense class Saturday morning and claimant "simply replied with 'oh yeah, I'm not going to do that.'" (Employer's Exhibit 1 p. E27) Claimant challenged that she relieved Perez from duties in the control room. Perez recalled at least seven times when that happened because she would be left short-staffed those nights while the other person was on the floor. McKibben asked Douglas Gaule about any discussion he had with claimant about the May 6 training. Gaule wrote that while discussing the upcoming training with her in the control room, "she stated she would not be attending." (Employer's Exhibit 1 p. E28) Guale did not testify at hearing but McKibben recognized his signature from working with him. Claimant has also invited David Pathammabong and Dustin Brandino to the party. Neither party referenced their recollections, if any.

The employer had received complaints from supervisors and staff about claimant's tardiness dating from June 2016, through April 2017. The employer does not have a time clock but may monitor punctuality via the surveillance camera system. Renshaw documented a verbal warning to claimant on May 25, 2016, regarding reporting out of uniform five minutes late. (Employer's Exhibit 1 p. E19) Howard documented a verbal warning to claimant on June 14, 2016 regarding tardiness and failure to notify a supervisor. (Employer's Exhibit 1 p. E20) Renshaw-Roll warned claimant in e-mails on September 29, and December 9, 2016, instructing

her to report to work in uniform or arrive early enough to change and report on time. (Employer's Exhibit 1 p. E21, 22)

During the May 30 fact-finding interview, claimant denied being tardy so time-stamped surveillance images were printed showing claimant's specific arrival times at the entrance door. (Employer's Exhibit 1 p. E6 through E18) Claimant's uniform consisted of a dark green shirt, kakhi pants and black shoes. Some photos show her arriving late out of uniform. (Employer's Exhibit 1 p. E7 off-the-shoulder shirt, dark pants; p. E10 light shirt and shoes; pp. E11-12 off-the-shoulder shirt; p. E13 dark pants, light shoes) Other video surveillance shows her car arriving late in the parking lot. Tardiness affects the employer's shift relief and creates a potential safety issue because of reduced staffing for that transition period. The employer has an attendance policy, which was provided to claimant on May 5, 2016. Tardiness or absenteeism may result in termination without following each step of the progressive disciplinary policy. The employer may skip, eliminate or create new steps. (Employer's Exhibit 1 p. E5, E30) Claimant was a union-covered employee. She did not request a union steward and did not file a grievance regarding the separation.

On April 27, 2017, claimant complained that coworker Donna Boldy yelled at her and caused her to be tardy claiming to have been locked between entry doors. (Claimant's Exhibit A p. 4) As part of the investigation, McKibben reviewed the entrance door surveillance video showing claimant arrived at 07:04:49, the entrance door opened at 07:05:09, and the second, interior entrance door opened at 07:05:58. Boldy was disciplined for yelling at claimant and McKibben concluded that Boldy did not make claimant late since she did not arrive at the exterior entrance door until after her shift start time of 7 a.m. (Employer's Exhibit 1 p. E16) The same day, McKibben drafted a record of employee discipline, marking it as a written warning, about excessive tardiness and prior verbal warnings. Claimant signed the record before Renshaw-Roll on April 28, 2017, acknowledging "the statement is true." (Employer's Exhibit 1 p. E23) Claimant was then at least eight minutes late on April 30, 2017. (Employer's Exhibit 1 p. E17)

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.

Iowa Code section 96.5(2)a provides:

> **Causes for disqualification.**
> 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.

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*, 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. 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. *Cosper* 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." *Cosper* at 10.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. A significant part of this case relies on the parties' credibility regarding the mandatory training absence on Saturday, May 6, 2017. Claimant had noteworthy differences between her fact-finding interview statement and her hearing testimony. In the fact-finding interview she denied telling anyone she was not going to the training, when an independent hearing witness (Perez) credibly disputed that, and two other non-witnesses (Gaule and Sandquist) relayed similar credible information to Renshaw-Roll. At the fact-finding interview, claimant flatly denied warnings about attendance and tardiness. The employer easily overcame the denial with three written warnings; one formal and two informal e-mails. Another, albeit minor, difference was the vacation start and end dates. At fact-finding, claimant reported having started vacation the day after the scheduled training on Sunday, May 7 and at hearing recalled the vacation beginning on Monday, May 8. While that may seem insignificant, when coupled with other inconsistencies and her failure to seek medical attention, the ALJ concludes the claimant was not ill on May 6, 2017, but sought to extend her vacation by a day. The employer has established that the claimant was warned that further improperly reported or unexcused absences could result in termination of employment and the final absence was not properly reported or excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 1, 2017, (reference 01) unemployment insurance decision is affirmed. 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.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/scn