

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CURTIS R JONES
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 15A-UI-10254-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 2, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2015. Claimant participated. Employer did not participate.

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 full-time as a line assembler from September 13, 2014, and was separated from employment on August 13, 2015, when he was discharged.

Claimant was told he was being discharged on August 13, 2015, by human resources, for being tardy and going home early. On August 12, 2015, claimant was working his scheduled shift when he had acid reflux. Claimant went to the nurse. Claimant had thrown up at work prior to going to the nurse. Claimant had run out of his prescription medicine for acid reflux. The nurse wrote claimant an exit pass. An exit pass allows employees to go home early. Claimant then went to the doctor after he left work. The doctor gave claimant some medicine for his acid reflux. The doctor also gave claimant a doctor's note to excuse him from work on August 12, 2015. Claimant went to work on August 13, 2015. Claimant gave the employer the doctor's note. Claimant worked for about an hour on August 13, 2015. Claimant was then told to go to human resources where he was discharged.

Claimant only had one warning for absenteeism, which was on July 14, 2015. This was a written warning. Claimant was not told his job was in jeopardy. Claimant had a doctor's excuse covering this warning. Claimant had a doctor's excuse for all of his absences prior to August 13, 2015, except for one. On that absence, claimant was sent home early by the employer.

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. Benefits are allowed.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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. *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). 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. *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 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, supra*.

An employer’s attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. On August 12, 2015, after throwing up at work, claimant went and saw the nurse. It was determined that claimant should leave work early. Claimant then left work early, but only after the nurse gave him an exit pass. Claimant then went to the doctor and obtained a doctor’s note excusing him from work on August 12, 2015. Claimant gave this doctor’s note to the employer the next day (August 13, 2015); however, claimant was discharged for absenteeism later that day. Claimant was discharged even though the employer was aware claimant was ill on August 12, 2015 when it sent him home. Claimant even went a step further and provided the employer with a doctor’s note excusing him from work on August 12, 2015. This was a properly reported absence due to illness.

Because claimant’s last absence was related to a 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.

DECISION:

The September 2, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs