

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALONZO J MCCULLOUGH
Claimant

GENERAL DYNAMICS INFO TECH
Employer

APPEAL 17R-UI-00680-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/30/16
Claimant: Respondent (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 employer filed an appeal from the November 16, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 13, 2017. Claimant participated. Employer participated through human resource manager Diane Fountain and supervisor Nadya Garay-Thompson. The administrative law judge took official notice of the administrative record, including fact-finding documents. 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 was employed as a full-time quality service agent through October 28, 2016. His last day of work was October 28, 2016, when he was 15 minutes tardy to work for his 7:30 a.m. shift because he was concerned and making calls to the employer's third-party agent Matrix about whether Matrix caseworker Geris Paulino received the documentation from his treating physician at University of Iowa Hospitals and Clinics. Claimant had received conflicting information from Fountain and Thompson about when the deadline was but it was his impression his job was at risk if Matrix did not receive it by that day after Thompson told him at the end of the shift on October 27 that it was his last day to provide documentation from his physician. The employer did not allow calls except during breaks. Claimant called Thompson at 7:15 a.m. and left a message to report the reason for his delay. Thompson does not report until 8 a.m.

During an October 18 meeting the employer requested medical documentation supporting his absences on September 20, 21, and October 4, 11, 14 and 21, 2016, related to his surgery and his fiancée's pregnancy. No submission deadline was set. Claimant began making calls to his medical providers and Matrix in an attempt to obtain the information for the employer but did not receive responsive communication from either. On October 25, Matrix provided the forms to

claimant for his medical provider to complete and return to Matrix, which would then communicate with the employer. Claimant gave those forms to his doctor's office more than once. He received documents from medical providers that had been seen on a particular date and excused him from work. Because those excuses did not have specific medical information the employer did not accept them. There was miscommunication between Fountain, Thompson, Matrix and medical offices. There was no confirmation of questions in an October 19 e-mail to Fountain and Thompson. Fountain sent him confirmation from Matrix they approved October 4 and 11 absences but Thompson said she did not have a record of approval for those dates. Fountain told claimant he could have an extension beyond Friday, October 28, but Thompson said there would be no extension beyond that date. Claimant was unable to reach Matrix's Paulino and was not allowed to speak with another caseworker about whether it received documents from medical providers or if they had forwarded those to the employer. When he complained to the employer's human resource office he was referred back to Matrix. There were no documents for the October 14 absence period because, as claimant explained to the employer, he did not receive services in the emergency room because the delay to receive examination was so long he left. Thompson had warned him in writing on May 3, 2016, about absenteeism.

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 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.

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). 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 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*.

FMLA provisions were enacted to protect an individual's employment, not to be used as a weapon by an employer against its employee. An employer's no-fault absenteeism policy or point system 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 Iowa Employment Security Law because it is not volitional. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. After a two-week period of reasonable efforts to obtain the requested information, an ongoing lack of communication and miscommunication from the employer's agent Matrix, medical providers and the employer, the final absence (tardiness) was based upon reasonable grounds. Likewise, his failure to provide the requested information was reasonable. Since the employer has not established a current or final act of misconduct, without such, the history of other incidents need not be examined.

DECISION:

The November 16, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs