

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA J EDWARDS
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 16A-UI-13221-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/06/16
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 28, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on January 4, 2017. The claimant Melissa Edwards participated and testified. The employer Iowa Premium LLC participated through Employment Manager Cara Spencer and Assistant Human Resource Director Jenny Mora. Claimant's Exhibits A through C were received into evidence.

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 quality assurance technician from December 30, 2014, until this employment ended on November 8, 2016, when she was discharged.

The employer has an attendance policy in place which allows employees to accumulate up to 12 attendance points within a rolling calendar year. Employees are given a half a point for

missing partial shifts of less than four hours, a full point for missing partial shifts of more than four hours, two points for each absence, and three points for a no-call/no-show. Employees are given a copy of the attendance policy upon hire and are reminded of the policy with each disciplinary action.

On June 28, 2016, claimant was issued a final written warning for her attendance. Claimant was advised further violations could lead to termination. Claimant testified all of her absences in 2016 were because she was unable to work due to a medical condition. Claimant followed the proper call in procedure each time she was unable to work. On October 18, 2016, claimant missed work because she was having surgery for a work related injury. Claimant was supposed to be cleared to return to work the following day, October 19, but called in on both that day and the following day. Claimant testified, following her surgery, she was prescribed medication that made her sleepy, groggy, and unable to drive. Claimant called in to report she would not be at work in accordance with the employer's policies. Claimant was subsequently terminated, on November 8, 2016, based on her October 19 and 20 absences.

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:

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.

871 IAC 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).

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra.

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. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Here, claimant was absent from work following surgery. Claimant was prescribed medication on these days which left her sleepy, groggy, and unable to drive. Claimant reported both absences in accordance with the employer's policies. Because her absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused

absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Since the employer has not established a current or final act of misconduct, without such, the history of other incidents need not be examined. However, even taking into consideration claimant's prior absences in 2016, the employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant provided credible testimony that all of her prior absences were related to a medical condition and she followed the proper call in procedures each time she was unable to work. Therefore, each of these absences would also be considered excused for the purposes of unemployment insurance benefits. Accordingly, benefits are allowed.

DECISION:

The November 28, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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