IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

TENA M. METCHELL Claimant **COLLIS, INC.** Employer	**APPEAL 20A-UI-10212-BH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/09/2020** **Claimant: Appellant (2)**

Iowa Code section 96.5(2)(*a*) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)(*a*) – Discharge for Misconduct

STATEMENT OF THE CASE:

Tena M. Metchell appealed the September 2, 2020 (reference 02) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on October 23, 2020. Metchell participated personally and testified. Collis, Inc. participated through human resources coordinator Michele Anderson, who testified. Joint Exhibit 1 was admitted into evidence.

ISSUE:

Did Collis discharge Metchell for job-related misconduct?

Was Metchell's separation from employment with Kimberlee's Kennels a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Collis hired Metchell on November 18, 2019. Metchell worked full time as a nano line operator. Collis discharged Metchell on March 18, 2020.

Collis has a written attendance policy that uses a point system. Each employee starts with zero points. Collis gives an employee one-half of one point for a properly reported absence. Collis gives an employee three points for a no call/no show or if the employee reports an absence less than 30 minutes before the start of the employee's shift.

Metchell accrued the following absences:

- January 28, 2020, for a funeral;

- February 3, 2020, because her daughter was ill;
- February 4, 2020, because her daughter was ill;
- February 14, 2020, because of bad weather;
- February 24, 2020, because she was ill;
- February 27, 2020, because she was ill;
- February 28, 2020, for an known reason;
- March 16 through March 18, 2020, because her child sustained a severe injury that necessitated surgery, which Metchell had difficulties scheduling.

Collis discharged Metchell due to the number of points she accrued under the company's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Collis discharged Metchell from employment for no disqualifying reason.

Under Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual's employment. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(*a*) does:

> "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Supreme Court has ruled this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Iowa Administrative Code rule 871-24.32(4) states:

> The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Rule 871-24.32(7) provides:

> 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.

And rule 871-24.32(8) states:

> While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10.

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*, 321 N.W.2d at 9; *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. *See Gaborit*, 734 N.W.2d at 555-558. An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, 350 N.W.2d at 191. When claimant does not provide an excuse for an absence the absences is deemed unexcused. *Id*.; *see also Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003). 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.

Excessive absenteeism has been found when there have been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. *See Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

The employer has the burden to prove misconduct. In cases such as this, when the employer discharged the claimant due to absenteeism, the employer must prove excessive, unexcused absenteeism. Collis has failed to meet its burden here.

Metchell's absences to attend a funeral, because her daughter was sick, due to her own illness, and because of her son's injury and surgery are all excused. At most, Metchell's absences on February 28, 2020 (late notice), and February 14, 2020 (late due to the weather) are unexcused. But neither of these absences triggered Metchell's discharge and, taken together, they are not excessive. Consequently, the evidence establishes Collis discharged Metchell for no disqualifying reason. Benefits are allowed, provided Metchell is otherwise eligible.

DECISION:

The September 2, 2020 (reference 02) unemployment insurance decision is reversed. Collis discharged Metchell from employment for no disqualifying reason. Benefits are allowed, provided Metchell is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Ben Humphrey
Administrative Law Judge

November 20, 2020
Decision Dated and Mailed

bh/mh