

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

SANDRA BALES

Claimant,

and

COTTAGE GROVE PLACE

Employer.

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HEARING NUMBER: 07B-UI-08532

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was held September 18, 2007. The administrative law judge's decision was issued September 19, 2007 concluding that the claimant was discharged for nondisqualifying misconduct. The employer has an attendance policy for which absences are rated on a point system. Employees accumulating seven points within a 12-month period (rolling calendar year) are subject to termination. The claimant accumulated points that subjected her to termination because of excessive unexcused absences. The employer did not distinguish whether or not the absences upon which the claimant accumulated points were attributable to illness. Two of the board members are unable to make a decision based on the record before them.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The claimant was discharged for a series of absences, which put her at a point level that the employer deemed to merit discharge. The employer has a point system for absences. Point systems, alone, are not dispositive of misconduct. An analysis of the nature of the absences and whether or not these absences were properly reported is necessary to determine if the absences are deemed excessive or unexcused for the purposes of unemployment insurance law. See, Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982) wherein the court held that absences due to illness, which are properly reported, are excused and not misconduct.

In this record, we only know that the claimant's final instance was unexcused due to lack of childcare on August 4, 2007. We also know that the claimant was on an approved leave of absence from May 29th through June 10th, 2006. We do not know, however, anything about the other absences, which garnered points leading to the claimant's discharge. This is where the record required further development. As the Iowa Court of Appeals noted in Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. Because we believe this record needs further development, we shall remand this matter for another hearing before an administrative law judge to specifically address the concerns of this decision.

DECISION:

The decision of the administrative law judge dated September 19, 2007 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall conduct a hearing following due notice. After the hearing, the administrative law judge shall issue a new decision which provides the parties appeal rights.

Elizabeth L. Seiser

Mary Ann Spicer

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

John A. Peno

AMG/fnv