

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ANGELA M HRUBES
Claimant

APPEAL NO: 19A-UI-00707-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA MOLD TOOLING CO INC
Employer

OC: 12/30/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Angela M. Hrubes, the claimant filed a timely appeal from a representative's unemployment insurance decision dated January 22, 2019, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged for work on December 31, 2018 for excessive unexcused absenteeism and tardiness after being warned. After due notice was provided, a telephone hearing was held on February 8, 2019. Claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Angela Hrubes was employed by Iowa Mold Tooling Company, Inc. from November 4, 2013 until December 31, 2018 when she was discharged for violating the company's no-fault attendance policy. Ms. Hrubes was employed as a full-time assembler and was paid by the hour. Her immediate supervisor was David Lagae. Claimant worked as a first shift employee and was scheduled to work 6:00 a.m. until 4:30 p.m. Monday through Thursdays.

Ms. Hrubes was discharged when she exceeded the permissible number of attendance infraction points allowed under the company's "no-fault" attendance policy. Under the terms of the policy, an employee is subject to discharge if they accumulate eight infraction points within a one year rolling period. Employees are assessed one infraction point for each day's absence if they have properly notified the company. Employees are assessed two attendance infraction points if they are absent and fail to notify the company. If an employee is tardy more than 30 minutes, they are assessed one whole attendance infraction point. Ms. Hrubes was aware of the company policy and had been warned about her attendance/punctuality on at least one occasion prior to her discharge. The final incident that resulted in the claimant's discharge took place on the morning of the December 31, 2018. On that date, the claimant inadvertently overslept. Ms. Hrubes called her immediate supervisor to request that she be allowed to take

one hour of vacation time to offset the one hour that the claimant would be late due to her oversleeping. Although Ms. Hrubes believes that her supervisor had authorized other employees to use vacation time under similar circumstances, he was unwilling to do so on the morning of December 31, 2018. Because the claimant's final tardiness had exceeded 30 minutes that day, she was assessed one infraction point. Because she had accumulated eight points, she was discharged from employment.

Of the eight infraction points accumulated by Ms. Hrubes, and used by the employer to discharge her, three absences were directly related to the illness of her children. The claimant supplied medical documentation to support her need to be absent on those dates. Later, on October 11, 2018, Ms. Hrubes was absent from work because her son was in intensive care and her presence was needed. Ms. Hrubes also supplied medical documentation for that incident. In all instances, the claimant had properly called in to report her impending absences or tardiness.

Although Ms. Hrubes had sufficient vacation time available to her, her supervisor was unwilling to allow Ms. Hrubes to use one hour vacation time on the morning of December 31, 2018, although other workers were given the option of not working that day because work was slow.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. 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 deemed misconduct within the meaning of the statute.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's "unexcused" absences were excessive. See 871 IAC 24.32(7). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absences related to issues of personal responsibility such as transportation, lack of childcare, or oversleeping are not considered excused. Properly reported absences related to illness or injury are excused for the purposes of Iowa Employment Security Law because the absence is not volitional. An employee's absences may be excessive but the absences are excused. All excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct.

The evidence in the record establishes that of the eight infraction points that were used to discharge the claimant from employment, four of the eight absences were for the illness of Ms. Hrubes or her children and were properly reported by the claimant. Absences due to illness that are properly reported are considered excused for purposes of unemployment insurance law.

The final attendance infraction that prompted the claimant's discharge took place on the morning of December 31, 2018. Claimant reported to work one hour late that day. The employer had not been willing to allow Ms. Hrubes to substitute one hour's vacation for her one hour late arrival, although other company employees in the department had been given the option of leaving work that day without penalty because of slow production.

Based upon the evidence in the record and the application and the appropriate law, the administrative law judge concludes that the employer has not sustained its burden of proof to establish work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. Ms. Hrubes unexcused absences were not excessive. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is subject to charge for benefits paid to Ms. Hrubes.

DECISION:

The representative's unemployment insurance decision dated January 22, 2019, reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn