

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRISSANDRA M VANDYKE
Claimant

2ND GENERATION INC
Employer

APPEAL 18A-UI-04645-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/25/18
Claimant: Appellant (5)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 10, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 9, 2018. Claimant participated. Raymond Wisemen participated on claimant's behalf. Sydnea Adler was registered as a witness on claimant's behalf, but she did not answer when contacted at the number provided. Employer participated through franchisee Randy Gottschalk. Claimant Exhibit A was admitted into evidence with no objection. Employer Exhibit 1 was admitted into evidence with no objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a general manager from October 29, 2007, and was separated from employment on March 24, 2018.

The employer has a written attendance policy that requires employees to work their scheduled shift. The employer requires employees contact their immediate supervisor and report their absence at least two hours prior to the start of their shift. Claimant was required to call Mr. Gottschalk to report her absences. The policy also provides that two consecutive no-call/no-shows is considered job abandonment. Claimant was aware of the employer's policy.

On March 19, 2018, Mr. Gottschalk met with claimant. Mr. Gottschalk instructed claimant that she had to contact him if she was going to be absent from work. Mr. Gottschalk was claimant's immediate supervisor.

The final incidents that led to claimant's separation occurred when claimant was absent from work on March 21, 22, and 23, 2018. Claimant was scheduled to work on March 21, 22, and 23, 2018, but she did not work these days. Claimant did not contact Mr. Gottschalk to report her absences on March 21, 22, and 23, 2018. Claimant did contact Mr. Wisemen and Ms. Adler to report her absences. On March 21, 2018, Mr. Gottschalk called the restaurant and discovered claimant was not at work. Mr. Gottschalk then called claimant and left a message, but she did not return his call. On March 22, 2018, Mr. Gottschalk called the restaurant and discovered claimant was not at work. Mr. Gottschalk again called claimant and left a message, but she did not return his call. On March 23, 2018, Mr. Gottschalk called the restaurant and discovered claimant was not at work. On March 24, 2018, claimant called Mr. Gottschalk to inquire about her job status. Mr. Gottschalk told claimant she was discharged for being a no-call/no-show on March 21, 22, and 23, 2018.

In 2018, claimant was absent from work without informing Mr. Gottschalk prior to the start of her shift on: January 24, 2018; March 7, 2018; March 9, 2018; March 10, 2018; March 11, 2018; March 21, 2018; March 22, 2018, and March 23, 2018. Employer Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(1) provides:

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

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer has a policy that if an employee has two consecutive no-call/no-shows, then is is considered job abandonment. Since the employer's policy calls for separation upon two no-call/no-show absences rather than three as required by the Iowa Administrative Code Rule, the separation was a discharge and not a quit. Iowa Admin. Code r. 871-24.25(4).

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Two absences would be the minimum amount in order to determine whether these repeated acts were excessive.

An employer's absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. On March 19, 2018, Mr. Gottschalk warned claimant that she must contact him to report her absences. The employer's policy also required claimant to report her absences to Mr. Gottschalk. Despite Mr. Gottschalk's warning and being aware of the employer's policy, claimant purposefully did not contact Mr. Gottschalk to report her absences on March 21, 22, and 23, 2018. Furthermore, claimant also failed to return Mr. Gottschalk's messages on March 21 and 22, 2018 about her absences. Although claimant may have contacted Mr. Wisemen and Ms. Adler to report her absences on March 21, 22, and 23, 2018, she did not contact Mr. Gottschalk as she was required to. Therefore, claimant's final absences (March 21, 22, and 23, 2018) are not considered excused. Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). It is also noted that claimant was aware her job was in jeopardy due to her final absences, because when she called Mr. Gottschalk on March 24, 2018, she asked about her job status.

The employer has established that claimant was warned and her final absences were not excused. Claimant's final absences, in combination with her history of unexcused absenteeism, are considered excessive. Benefits are withheld.

DECISION:

The April 10, 2018, (reference 01) unemployment insurance decision is modified with no change in effect. Claimant did not quit but was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs