IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ANDREW M TEMPLEMEYER Claimant **CASEY'S MARKETING CO** Employer	**APPEAL 14A-UI-07674-LT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/08/14** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 17, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2014. Claimant participated. Employer participated through manager Karen Willoughby. Claimant's Exhibit A was received. Since claimant did not receive the employer's proposed exhibits, they were not included in the hearing record.

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 part time as a kitchen cook and was separated from employment on June 8, 2014. His last day of work was May 27, 2014. Claimant had missed work on June 4 and 5, which were covered by medical excuses. (Claimant's Exhibit A, pp. 1, 2) He was scheduled to work June 6 but arranged for someone to cover his shift for his birthday that day. The assistant manager Carrie Hicks called claimant on June 7 at 9:36 a.m. Minutes before this call claimant found out his test result from June 4 was positive, was emotionally upset and felt uncomfortable working with food that day because of open sores on his face and body. He did not obtain medical direction about work nor did the employer request any. He intended to continue working but needed that day off for his mental health. Claimant called Hicks before his shift and explained the situation to her. (Claimant's Exhibit A, p. 3) She told him if he did not show up for his shift that day he would be terminated. He did not call or report for work on June 8, because he had been discharged from employment the day before. He had absences on April 21, 22, 2014, related to transportation trouble. The employer had not previously warned claimant verbally or in writing that his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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. 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). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

The employer has not established that claimant had excessive absences that would be considered unexcused for purposes of unemployment insurance eligibility. Because the absences were 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. In the case of a potentially infectious illness, it would seem reasonable that an employer would not want an employee to report to work if they are at risk of infecting other employees or customers or contaminating food. Certainly, an employee who is ill or injured or distressed due to the condition is not able to perform their job at peak levels.

Furthermore, inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The July 17, 2014, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/css