

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BECKY S BAUGHMAN**  
Claimant

**APPEAL NO. 13A-UI-01373-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENNIE EDMUNDSON**  
**MEMORIAL HOSPITAL**  
Employer

**OC: 01/06/13**  
**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 February 1, 2013 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 18, 2013. Claimant participated and was represented by Joseph Basque, Attorney at Law. Employer participated through food service team leader Anthony Chisem and human resources director Donna Wellwood and was represented by Heidi Guttua-Fox, Attorney at Law. Employer's Exhibits 1 through 4 and 7 through 14 were received. Proposed exhibits 5 and 6 were not admitted because they were not related to the issue that caused the separation. Claimant's Exhibits A and B were received.

**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 full-time as a line production cook from 1973 and was separated from employment on January 8, 2013. On January 4 claimant was ill and took the full dosage of prescribed Xanax generic (Claimant's Exhibit A) that caused her to not hear her alarm, oversleep and miss reporting to her January 5, 2013, 5:30 a.m. shift. She awoke when she heard the phone ring at 6:10 a.m. and called supervisor Cheryl Adams back immediately. She was impaired enough from the medication that she does not recall the conversation but relies on Adams' notation of the phone conversation. (Employer's Exhibit 11) The employer's policy requires two hour advance notice of the absence. (Employer's Exhibit 1, p. 1) She had been most recently warned about attendance on June 12, 2012. The employer's policy considers an unscheduled absence as unexcused, regardless of reason. She notified Wellwood she was on anxiety and anti-depressant medications.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

871 IAC 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 Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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 Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, claimant since claimant was medically unable to report the absence because of properly used prescribed medication side effects, the delay in reporting is excused. See, *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity. One unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because the late call for the final absence was justified by claimant's incapacity and the absence was related to illness caused by medication side effects, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Benefits are allowed.

**DECISION:**

The February 1, 2013 (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld based upon this separation shall be paid to claimant.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs