

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA N SEIGFRIED
Claimant

SHEARERS FOODS BURLINGTON LLC
Employer

APPEAL 16A-UI-05519-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/24/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 12, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 1, 2016. Claimant participated. Employer did not participate.

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 packer on line nine from November 23, 2015, and was separated from employment on April 22, 2016, when she was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving eight points. Claimant was aware of the employer's policy.

The final incident occurred when the employer found that claimant was tardy to her shift on April 19, 2016. Claimant was three or four minutes late due to car trouble. Claimant did not have a cell phone to contact the employer to let it know she would be late. Prior to April 19, 2016, claimant had provided an updated phone number to her supervisor, but the number had not yet reached human resources. Prior to the scheduled start time of claimant's shift on April 19, 2016, the employer had called off all of the employees that worked on line nine. The employer was not able to get a hold of claimant because human resources had her wrong number on file. After claimant arrived at work and discovered that line nine was shut down and none of the other line nine employees were at work, she requested to leave, but the employer told her she had to work on a different line. Claimant worked on the different line for

approximately three hours and then was suspended for being over eight points because she was tardy on April 19, 2016. Claimant then met with the employer on April 22, 2016 and was discharged for accumulating more than eight attendance points, in violation of the employer's attendance policy.

Prior to April 19, 2016, the employer had warned claimant that her job was in jeopardy due to attendance issues. On January 5, 2016, claimant left work early because her boyfriend told her that her son was having breathing issues. Claimant told the employer why she was leaving early. On January 16, 2016, claimant could not come to work because of a snow storm and her boyfriend did not want her to drive his truck. On February 17, 2016, claimant's son was sick. On March 1, 2, 3, and 4, 2016, claimant was sick. Claimant did provide a doctor's note to the employer. On March 10, 2016, claimant was absent. On March 21, 2016, claimant did not have a ride to work and was absent. On March 22, 2016, claimant was also absent.

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. Benefits are allowed.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law." The requirements for a finding of misconduct based on absences are therefore twofold. First, the

absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. 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, supra*.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. 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). A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit, supra*. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. More than half of the claimant's absences were due to her or her son's illness, which are not considered unexcused for the purpose of the Iowa Employment Security Act. Claimant's final incident of absenteeism that led to discharge was when she was late to the start of her shift on April 19, 2016 due to vehicle trouble. Normally, this would be considered unexcused, however, it is noted that had claimant's supervisor provided her new phone number to human resources prior to the start of her shift, claimant would have been called off of work, like her co-workers, because her line was shut down and thus would not have been tardy on April 19, 2016. Furthermore, there was no evidence presented that claimant's co-workers from her line were given attendance points for not working, therefore, it appears claimant was subject to disparate application of the policy, which cannot support a disqualification from benefits. The employer has not met the burden of proof to establish misconduct. Benefits are allowed.

DECISION:

The May 12, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs