

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACIA L HILL
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 17A-UI-07356-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/18/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for repeated tardiness. The parties were properly notified of the hearing. A telephone hearing was held on August 7, 2017. The claimant participated and testified. The employer participated through Lab Manager Staci Campbell and Human Resource Director Brandi Tiesman. Claimant's Exhibit A was received into evidence.

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 phlebotomist from October 3, 2016, until this employment ended on June 19, 2017, when she was discharged.

The employer has an attendance policy in place which starts to progressively discipline employees once they are late or absent from work six times within a rolling calendar year. Once six absences or tardies are accumulated, a first written warning is issued. Employees are given a second written warning at eight absences or tardies and a final warning at ten. Once an employee is absent or tardy twelve times within the rolling calendar year, they are subject to termination. This policy is located in the employee handbook, which is given to all employees upon hire, and is reviewed with each disciplinary action.

Claimant was issued written warnings for her attendance on January 12, February 3, March 12, and May 24, 2017. When claimant was issued the final warning on May 24, she was advised she would be subject to termination if her attendance did not improve. Claimant testified a majority of her attendance violations were attributable to issues with her 13-year-old child. Claimant explained she was absent from work several days because she had to attend court hearings for her child and was late or absent other days because her child had run away the

night before or was uncooperative getting ready in the morning. (Exhibit A). Claimant was not sure how many absences were attributable to court dates and how many were due to other issues with her daughter. Claimant is a single parent and, while family members were sometimes available to help, was the primary caregiver for her daughter. Claimant estimated only four or five of her attendance occurrences were for reasons outside the issues with her daughter. Claimant was absent one of these days due to illness and was late or absent other days due to issues with her car. Claimant could not recall any other reasons she may have been late to or absent from work. For each of these occurrences claimant called in to report she would be absent or tardy in accordance with the employer's policies.

On June 19, 2017, claimant was late to work. Claimant was late because she had misread the schedule and thought she had the day off until she was called by coworkers after the start of her shift. Claimant did not call to report her tardy on this day, as she was unaware she had to work until she heard from her coworkers. The tardy on June 19 brought claimant to twelve tardies and eight absences since she was hired in October 2016. The decision was then made to discharge claimant from employment based on her attendance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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(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.

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. 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 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).

An employer's point system or no-fault 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. At least some of claimant's tardies or absences were due to juvenile court dates related to her minor child. Claimant was required to go to court on these dates, though it was not any decision or behaviors on her part that led the family to be involved with the court. Accordingly, these absences are excused. Unfortunately, claimant could not recall the dates or number of times she was absent or tardy from work for reasons related to mandatory court appearances.

Even without taking the absences attributable to issues with her daughter into consideration, claimant testified she was absent from or tardy to work either four or five times from October 2016 through June 19, 2017. Only one of these absences was due to illness or other reasonable grounds and therefore excused. The remaining three to four absences are not excused. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence on June 19 was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The July 11, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs