

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN N ATKINSON
Claimant

JELD-WEN INC
Employer

APPEAL 15A-UI-11196-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/13/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 1, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 21, 2015. Claimant participated. Elizabeth Stancil participated on behalf of claimant. Employer participated through human resources associate, Cole Johnson. Employer Exhibit One was admitted into evidence without objection. Claimant Exhibit A was admitted into evidence without objection.

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 material warehouse from February 3, 2010, and was separated from employment on September 11, 2015, when he 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 six points in a rolling twelve-month period. The policy is a no-fault policy. Claimant was aware of the employer's policy.

The final incident occurred when claimant was tardy on September 11, 2015 to his shift. Claimant was tardy due to transportation issues. Claimant had a blow out on his tire and was seven minutes late.

Claimant was last warned on September 1, 2015, that he faced termination from employment upon another incident of unexcused absenteeism. Employer Exhibit One. Claimant was also issued a written warning for his attendance infractions on May 26, 2015. Employer Exhibit One. A majority of claimant's absences were related to his wife's serious medical issues and she was

either in the hospital or could not be left alone. Claimant had eight infractions for absenteeism and only two were not related to his wife's medical issues.

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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, two unexcused absences are not disqualifying since it does not meet the excessiveness standard.

Claimant had eight separate instances of absenteeism that led to him accumulating seven points under the employer’s attendance policy. However, all but two of the instances were related to serious medical issues involving claimant’s wife. The medical issues involving claimant’s wife were serious enough in nature that they involved trips to the hospital or his wife not being able to be left alone. There was no evidence to contradict claimant and Ms. Stancil’s testimony as to the reason for the majority of claimant’s absences. Although these absences were not related to claimant’s illness or injury, they do fall under the other reasonable grounds to be absent from work because of the seriousness and that it involved his wife. Therefore, claimant had only two absences that would be considered unexcused (the administrative law judge does note that claimant disputes one of the absences as having been a properly excused vacation day. Two unexcused absences are not considered excessive.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Absences must be both excessive and unexcused to result in a finding of misconduct. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Furthermore, a majority of the points were assessed due to claimant’s wife’s medical issues, which are not considered unexcused. The employer has not met the burden of proof to establish misconduct. Accordingly, benefits are allowed.

DECISION:

The October 1, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css