IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ROBIN A CONAWAY Claimant **MASTERBRAND CABINETS INC** Employer	**APPEAL 19A-UI-06633-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/21/19** **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/appellant, Robin A. Conaway, filed an appeal from the August 13, 2019 (reference 01) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 16, 2019. The claimant participated personally and was represented by Gary Papenheim, attorney at law. The employer participated through Debbie Tyler, senior human resources generalist. Generalist Jason Thompson also testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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: The claimant was employed full-time as a custodian beginning in 1995 and was separated from employment on July 25, 2019, when she was discharged.

The claimant was trained on the employer's policies throughout employment, which included the employer's recent move to a "bucket" system of hours for unscheduled, unexcused absences. The employer transitioned to the new policy in January 2019, and at the time, the claimant was informed she had 38 available hours until her August 8 anniversary. When an employee reached a zero balance, they were to receive a warning and any future infractions would result in discharge. The claimant reached a zero balance and was issued a warning on March 11, 2019. Thereafter, the employer revised its policy to give all employees 16 additional hours due to unexpectedly bad winter weather. The employer asserted that the claimant was told she would be discharged for reaching a zero balance a second time before her anniversary date.

On July 19, 2019, the claimant was scheduled from 4:00 a.m. until 12:30 p.m. The claimant had been off on intermittent FMLA earlier that week. She became ill due to heat (the premises are not air conditioned) and had a migraine. She notified her manager that morning she wanted to leave work early due to illness. She did not request FMLA. He told her to be mindful of her bucket hours as he knew she was running low. She left at 11:00 a.m. The claimant missed 90 minutes of her shift that day. The employer charged her 2 hours of bucket time because it is used in 1 hour increments. Had the claimant completed a meal adjustment form, the employer would have added 30 minutes to the claimant's schedule (to reflect she was taking her lunch from 11:00-11:30 which was her customary lunch time) and she would have only had to use one hour of bucket time, leaving her with a positive balance of 1 hour remaining. The claimant was unaware of the meal adjustment policy and did not request it. She was subsequently discharged for exceeding her bucket time by leaving early due to illness on July 19, 2019.

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 unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id*.

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).

In the specific context of absenteeism the administrative code provides:

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.

871 IAC 24.32(7); *See Higgins v. IDJS*, 350 N.W.2d 187, 190 n. 1 (Iowa 1984)("rule [2]4.32(7)…accurately states the law").

Iowa Admin. Code r.871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. The claimant's final absence was due to medical illness and properly reported to her manager on July 19, 2019. It is therefore, considered excused when determining unemployment insurance eligibility.

Based on the evidence presented, the administrative law judge concludes the employer has not established that the claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The August 13, 2019 (reference 01) initial decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn