

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMBER K RUSSELL
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 19A-UI-03851-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/07/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 1, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 31, 2019. Claimant participated. Employer did not register for the hearing and did not participate. Claimant's Exhibit A was 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 began working for employer in June 2016. Claimant last worked as a full-time cashier. Claimant was separated from employment on April 12, 2019, when she was terminated.

Claimant had attendance issues during her employment.

In January 2019, employer suspended claimant for three days due to attendance issues.

Claimant was tardy many times thereafter due to unreliable childcare.

Claimant had a no-call/no-show absence on April 7, 2019.

Claimant returned to work on April 8, 2019. Claimant asked the store manager, Linda Van Roekel, if she was going to be terminated for her absence on April 7, 2019. Van Roekel said no and allowed claimant to work her shift. Van Roekel said they would talk about the issue later, but the store got busy and they did not have time to do so.

Claimant was absent on April 10 and 11, 2019, due to illness. Claimant properly notified employer of her absence.

On April 12, 2019, claimant returned to work and presented a doctor's note to Van Roekel excusing her from work on April 10 and 11, 2019. Van Roekel terminated claimant's employment, stating the termination was based on her absence on April 7, 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.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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).

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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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. Absences due to properly reported illness are excused, 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

In this case, claimant's last absence on April 11, 2019, was for reasonable grounds and was properly reported. It is considered excused under the law. Claimant's April 7, 2019, is considered unexcused as it was unreported and for personal reasons. Although Van Roekel told claimant she was terminating her for the unexcused April 7, 2019, absence, the facts do not

support that position. Van Roekel allowed claimant to return to work after the April 7 absence and stated she would not be firing her for that absence. Claimant did not have any additional unexcused absences after April 7, 2019. Therefore, the employer has not established a current or final act of misconduct and the separation from employment is not disqualifying.

DECISION:

The May 1, 2019, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn