

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAMILLE P GOODMAN
Claimant

STREAM INTERNATIONAL INC
Employer

APPEAL 16A-UI-04608-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/27/16
Claimant: Appellant (1)

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 filed an appeal from the April 15, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 3, 2016. Claimant participated. Employer participated through human resources business partner Staci Albert and team lead Mary Kay Shroeder. The employer's proposed exhibits were not admitted since they were not sent to the claimant

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 customer support professional for Stream International from January 23, 2012 and was separated from employment on March 31, 2016, when she was discharged. She was last absent on March 30. Her shift ran from 11:30 a.m. to 8:30 p.m., with one hour notice prior to the shift start time required to report absences. She called at 1:30 p.m., saying she ran out of gas and needed her husband to come home and take her to work. She was a no-call/no-show after that for the remainder of the shift. She later explained her back was sore from shoveling snow and may get it checked but made no mention of when. She said she would try to go to the doctor but wanted to get to work. Claimant did not tell Schroeder, who worked until 8 p.m., she was having pain or intended to go to the emergency room and provided no verifying information to the employer. Schroeder would have accepted a medical excuse if it were offered. Claimant's supervisor Chad Ballard was on vacation for two weeks during this time and Shroeder was in charge.

The employer had warned her in writing, on March 29, 2016, about attendance. On March 20, 2016, she did not properly report her absence in advance of her shift; which was related to medication taken at bedtime for migraines. She did not present medical documentation of the condition or medication side effects to the employer. On February 25, 2016, she was absent to

take her 11-year old daughter to the clinic. She was tardy on February 14, 2016 because her husband did not get off work in time when the child care provider was unavailable and her sister was not available either. On January 25, 2016, she called half way through her shift to report a medical absence. On December 24, 2015, she was tardy due to the holiday schedule change and claimed illness. On December 23, 2015, she was absent due to illness. On December 21, 2015, she was tardy because her daughter missed the bus. She was tardy due to construction traffic on October 29, 2015. Her absence on September 29, 2015, was related to illness.

In mid-February and early-March, 2016, the employer had conversations with claimant about renewing her leave-of-absence forms. She did not do so. The employer sent three letters to claimant's address of record on February 25, 2016 and February 26, 2016, advising her she needed to recertify and included recertification forms and contact information. Claimant never asked for help with the leave paperwork. Her intermittent leave of absence expired and none of the detailed absences above were related to those interspersed leaves of absence.

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(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. The employer has established that the claimant was warned that further improperly reported and/or unexcused absences could result in termination of employment and the final absence (tardiness and failure to report) was not properly reported or excused. FMLA provisions were enacted to protect an individual’s employment, not to be used as a weapon by an employer against its employee. Likewise, an employee bears responsibility for compliance with FMLA terms and cooperative communication with the employer. Since claimant was tardy and absent beyond the medically-related absences, those absences are considered unexcused. The final absence, in combination with the claimant’s history of unexcused absenteeism (tardiness), is considered excessive. Benefits are withheld.

DECISION:

The April 15, 2016 (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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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