

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE J WOOD
Claimant

RYDER INTEGRATED LOGISTICS INC
Employer

APPEAL 17A-UI-12273-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/05/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 27, 2017, (reference 01) unemployment insurance decision that denied benefits based on his discharge for excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on December 19, 2017. The claimant participated and testified. The employer participated through Hearing Representative Karen Stonebraker and Human Resource Generalist Emily Rummels. Joe Stewart was also present on behalf of the employer but did not testify. Employer's Exhibits 1 through 8 were 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 material handler from September 19, 2016, until this employment ended on October 4, 2017, when he was discharged.

The employer has a points-based attendance policy in place. (Exhibit 3). Employees are allowed to accumulate nine attendance points within a rolling 12-month period before they are terminated. Employees are issued one point for each day they miss or tardies greater than two hours and a half a point if they leave early or are less than two hours tardy. Employees are given three "free" tardies, if they are less than 30 minutes late and can get a one point credit for each month they go with no attendance occurrences. Claimant was aware of and understood the attendance policy. (Exhibit 8). From October 7, 2016 until he was discharged claimant was absent from work on 10 occasions and was tardy or left early on 12 occasions. Claimant also received five and a half credits for good attendance during this time. (Exhibit 1). Claimant received warnings for his attendance on March 8 and May 18, 2017. (Exhibit 2). The May 18 warning advised claimant that further occurrences would lead to termination. Of claimant's last nine absences, one was due to his own illness, another was due to the illness of his minor child, three had no documented reason, and four were related to the illness and subsequent death of his grandfather.

On September 16, 2017, claimant asked for permission to leave work early to visit his ailing grandfather. On September 18 claimant notified Rummels that his grandfather had passed away on September 16 before he was able to get to him. Claimant was granted bereavement leave for September 18, 19, and 23. (Exhibit 4). Employees are not given points for bereavement time, provided they supply supporting documentation. This documentation could include a death certificate, funeral packet, or newspaper obituary.

On September 24, 2017, claimant emailed Rummels an obituary for his grandfather in the form of a Word document. (Exhibit 5). The obituary submitted by the claimant identified the deceased as a Ralph James Woods Jr., who died on September 16, 2017, and identified claimant as his grandson. Rummels testified something about this seemed “off” and noted there was no reference to a funeral home in the obituary. On September 25, 2017, Rummels asked claimant for the name of the business where his grandfather was cremated. Claimant gave her a business name, but Rummels could not find any record of a business by that name. Rummels then asked claimant if he was sure about the business name and asked him to provide the business name, address, and telephone number. (Exhibit 6). Rummels testified claimant later came to her office and told her everything had been “sealed up” and he had no access to any records. According to Rummels claimant went on to say that his grandfather’s original name was not what he thought it was and his grandmother would not share his true name. Claimant later supplied Rummels with the name Merlin Moore.

The employer was able to locate an obituary for this individual, which stated he died on September 13, 2017 and does not mention claimant. (Exhibit 7). The picture included in that obituary appears to be the same as the one included in the obituary claimant provided for Ralph James Wood Jr. Claimant testified the Moore was like a grandfather to him and he would call him Grandpa Ralph. Claimant also claimed the date of his death was a typographical error in the obituary and that Moore had indeed passed away on September 16, 2017. Page three is a print-out of online condolences to the family of the deceased, with a posting as early as 7:55 a.m. on September 16, 2017. Claimant then went on to testify that Ralph James Wood Jr. was actually his great-grandfather and also died on September 16, 2017. When asked about the similarity between the two pictures, claimant testified that, while the two men were not related, they were like twins, and both happen to have taken pictures wearing the same attire and against the same background. Claimant testified he was told by the cremation center that he could not have the death certificates because he was not biological family. As claimant could not provide documentation supporting his need for bereavement leave, his final three absences were not excused and the decision was made to end his employment for exceeding the number of absences allowed under the attendance policy.

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.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge does not find the claimant's version of events to be credible, as his testimony regarding his bereavement leave was both illogical and riddled with inconsistencies.

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. Claimant left work early on September 16 and was absent from work on September 18, 19, and 23 for unknown reasons. These absences are not excused. The employer has established the claimant was warned further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The November 27, 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs