

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANITA M HECKMAN**  
Claimant

**AMERICAN PACKAGING CORP**  
Employer

**APPEAL 21A-UI-08316-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/31/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On March 25, 2021, the claimant, Anita M. Heckman, filed an appeal from the March 16, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Friday, June 4, 2021. The claimant, Anita M. Heckman, participated. The employer, American Packaging Corp., participated through Mindy Fritz, HR Generalist. Employer's Exhibits 1 through 9 was received and admitted into the record.

**ISSUE:**

Was the claimant discharged from employment 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, most recently as a slitter operator, from May 4, 2020, until February 2, 2021, when she was discharged due to absenteeism.

Claimant's final absence occurred on January 30, 2021. Claimant attempted to drive to work that day, but there were poor road conditions due to weather, and her car slid into the ditch. Claimant could not retrieve her car due to a tow ban, and she had no other means of getting to work. Claimant called and properly reported this incident to the employer.

Claimant had a prior weather-related absence on December 29, 2020. Similar to the January 30 incident, claimant was attempting to drive to work when her car slid into a ditch, and there was a tow ban in place. Claimant did not receive an attendance point for this absence. She was told by the plant manager that since she attempted to come to work, the absence would not count against her.

Claimant had several prior absences. On November 17, 2020, claimant was absent for personal reasons. On September 20, 2020, claimant was absent due to personal illness. On

June 12, 2020, claimant was absent due to personal illness. On May 29, 2020, claimant's husband had a serious accident at work and she had to take him to the hospital.

Claimant also left work early on three occasions. On December 4, 2020, claimant left early because her mother-in-law was on the way to the hospital via ambulance and claimant was the only family member available to be with her. On July 12, 2020, claimant left work early due to personal illness. On July 1, 2020, claimant left work early for a reason she could not recall during the hearing.

The employer maintains an attendance policy that outlines progressive disciplinary action related to recurring absenteeism. Claimant received a copy of this policy. Under the policy, an employee will first receive a supervisory coaching, followed by a documented verbal warning, followed by a written warning, prior to termination for absenteeism. Claimant only received a final written warning. This warning was issued to her on December 14, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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).

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*, 321 N.W.2d at 6; *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*, 734 N.W.2d at 554. 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.

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). See *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity.

Here, the evidence in the record establishes that claimant did not receive her first warning – her first formal notice of her attendance points – until December 14, 2020. That was claimant's first notification that she needed to improve her attendance in order to preserve her employment. Following this warning, claimant had two absences: December 29, 2020, and January 30, 2021. Both of these absences were due to adverse weather-related road conditions which were beyond claimant's control. Furthermore, after the December 29 absence, the employer told claimant that since she attempted to come to work, that absence would not count against her. Claimant, therefore, had no reason to believe that the January 30 absence would put her job in immediate jeopardy. The employer had just excused an absence under identical circumstances.

The administrative law judge finds that the employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant's last absence was related to reasonable grounds that claimant did not know would jeopardize her job, and therefore there is no final or current incident of unexcused absenteeism which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The March 16, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Elizabeth A. Johnson  
Administrative Law Judge  
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June 18, 2021  
Decision Dated and Mailed

lj/scn