

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRACIE L BALDWIN
Claimant

STREAM INTERNATIONAL INC
Employer

APPEAL 16A-UI-12031-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 27, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. The hearing was started and some evidence was presented on November 30, 2016. Claimant participated and the employer participated through human resources business partner Staci Albert and team leader Valarie Petersen on November 30, 2016. However, due to technical issues during the hearing on November 30, 2016, the telephone hearing was continued to December 15, 2016. A new notice for the telephone hearing was mailed out to the parties, the parties were properly notified about the hearing, and the telephone hearing resumed on December 15, 2016. On December 15, 2016, claimant did not answer when contacted at the number provided and did not participate. The employer participated through human resources business partner Staci Albert. Team leader Valarie Petersen did not attend the hearing on December 15, 2016. Employer exhibit 1 was admitted into the record with no objection.

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 from June 13, 2016, and was separated from employment on October 12, 2016, when she was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving twelve points in a rolling twelve month period. The employer has a call-in procedure that requires employees to call two separate places (an automated system and their supervisor) at least one hour prior to the start of their shift. Claimant was aware of the employer's policy and call-in procedure.

The final incident occurred when claimant was absent from her scheduled shift on October 12, 2016. Claimant did not call the employer to report her absence. Claimant had been a no-call/no-show for two prior shifts (October 8 and 11, 2016), so Ms. Albert and Ms. Petersen called her on her cellphone. Claimant answered the employer's phone call and stated she knew she was scheduled to work, but she was on her way to Sioux Falls to bail out her husband. Claimant also stated she had been in jail on October 8 and 11, 2016. Claimant was over twelve points after the October 12, 2016 absence.

Claimant was absent from July 28 through August 31, 2016. Claimant was absent due to personal reasons on August 2, 3, 4, 5, 6, and 9, 2016. Claimant called the automated system and reported absent, but she did not give a specific reason for her absences. Claimant did not call her supervisor to report these absences. On August 10, 2016, the employer (Ms. Peterson) called claimant and she stated she had bronchitis. Claimant told Ms. Peterson she was going to fax a doctor's note for her absences, but she never faxed a doctor's note to the employer. If claimant had faxed a doctor's note, the seven absences would have counted as just one point instead of seven points. Ms. Albert testified she is not aware if claimant had bronchitis. On August 11, 2016, claimant called the employer and stated she was not coming in. On August 12, 2016, claimant called the employer and reported absent. Ms. Peterson called claimant and left a message for her on August 12, 2016, but claimant did not call Ms. Peterson back. On August 13, 2016, Ms. Peterson called claimant because claimant had not called the employer to report her absence. Claimant told Ms. Peterson she was absent for personal stuff, but would be in on August 16, 2016. On August 16, claimant was absent because her son was injured. On August 17, 18, 19, and 20, 2016, claimant called the automated system and reported absent, but she did not give a reason. The employer is not aware why claimant was absent on August 17, 18, 19, and 20, 2016. On August 23, 24, 25, 26, and 27, 2016, claimant called in absent through the automated system and she did not give a reason for her absences. Ms. Peterson called claimant on August 23, 24, 25, 26, and 27 2016, but was unsuccessful in reaching her. On August 29, 2016, claimant was a no-call/no-show. On August 30 and 31, 2016, claimant called the automated system and reported absent, but she did not call Ms. Peterson. In August 2016, claimant did not call her manager as required by the policy; she just called the automated system.

On September 1, 2016, the employer finally spoke to claimant and it placed her on a personal leave of absence from September 1 to September 30, 2016. Claimant's next scheduled work day was October 4, 2016.

On October 4, 2016, claimant called in absent. Claimant stated she had injured her hand. Claimant did not work on October 4, 2016. Claimant did not provide a doctor's note regarding her injury. On October 4, 2016, the employer advised claimant to report to work on October 5, 2016. Claimant was scheduled to work on October 5, 2016, but she did not work. Claimant did not call the employer to report her absence on October 5, 2016. Claimant was also scheduled to work on October 6 and 7, 2016, but she did not work. Claimant did not call the employer and report her absences. Ms. Peterson called claimant on October 7, 2016 and spoke to her. Claimant told Ms. Peterson that her hand was infected and it needed to be drained. Ms. Peterson advised claimant to be at work the next day. Claimant stated she would try to be in. Claimant did not mention the reason for her absences on October 5 or 6, 2016. Claimant was a no-call/no-show on October 8, 2016. Claimant was off work on October 9 and 10, 2016. Claimant was a no-call/no-show on October 11, 2016.

The employer had warnings prepared to give to claimant regarding her absences, but because she was off work from July 28, 2016 until her separation, the employer was unable to give claimant these warnings. Employer Exhibit 1. The employer informed claimant about her point

status during phone conversations and warned her that her job was in jeopardy. The employer did not receive any doctor's notes from claimant regarding her absences. Claimant also was absent on June 28, 2016, June 30, 2016, July 14, 2016, July 15, 2016, and July 27, 2016. Employer Exhibit 1.

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. Benefits are denied.

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 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).

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982). Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Two absences would be the minimum amount in order to determine whether these repeated acts were excessive. Further, in the cases of absenteeism it is the law, not the employer's attendance policies, which determines whether absences are excused or unexcused. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 557-58 (Iowa Ct. App. 2007).

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 had multiple absences from June 28, 2016 until her separation without given a reason as to why she was absent, including a no-call/no-show on August 29, 2016. Claimant also failed to contact the employer prior to her shift on her final absence on October 12, 2016, despite being able to communicate with the employer (the employer called and spoke to claimant on her cellphone while she was traveling). Furthermore, the employer had verbally warned claimant that her job was in jeopardy and it had informed her of her point status during phone conversations.

The employer has established that claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The October 27, 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 claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs