IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JESSE T ELDRIDGE Claimant **MAINTAINER CORPORATION OF IOWA INC** Employer	**APPEAL 22R-UI-05428-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/01/21** **Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a – Discharge for Work-Related Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Absenteeism

STATEMENT OF THE CASE:

The claimant, Jesse T Eldridge, filed an appeal from the September 29, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged due to excessive unexcused absenteeism. The parties were properly notified of the hearing. A hearing was scheduled for December 10, 2021. The claimant did not participate in that hearing. This administrative law judge issued a default decision 21A-UI-21914-SN-T. The claimant appealed to the Employment Appeal Board. The EAB sent the matter back down to the administrative law judge level to be evaluated on the merits.

A hearing was initially scheduled on remand for April 11, 2022. The claimant appeared. He was represented by Grant D Beckwith, attorney-at-law. The administrative law judge postponed the hearing due to Mr. Beckwith's request to seal the entire hearing record because the case turned on various claimant medical records. This administrative law judge issued an order sealing record related to the treatment of the claimant's medical condition, but otherwise denying the request.

A telephone hearing was held on May 2, 2022. The claimant, Jesse T Eldridge, participated. The employer, Maintainer Corporation of Iowa Inc, participated through Human Resources Manager Brandi Hansen. Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, A, B, C, D, E, F, and G were received into the record. Official notice was taken of the agency records.

ISSUE:

Did the claimant quit without good cause attributable to the employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

The claimant was hired on November 11, 2019, as a full-time warehouse technician. The claimant continued to work in that role until his employment ended on June 11, 2021, when he

was terminated. The claimant's shift was from 6:00 a.m. to 3:30 p.m. Monday through Friday. His direct supervisor was Kyle Grimes.

The employer has an attendance policy. The employer provided a copy of its attendance policy. (Exhibit 12) The claimant received the employee handbook on the date of his hire.

On June 12, 2021, the claimant experienced an injury while he was away from work.

On June 14, 2021, the claimant informed the employer of the injury. The claimant sent in a note from the emergency department instructing him to remain away from work from June 14, 2021, through June 16, 2021. The claimant provided a copy of this doctor's note. (Exhibit B)

On June 16, 2021, the claimant obtained a doctor's note from his physician releasing him to return to work on June 22, 2021. The claimant provided a copy of this doctor's note. (Exhibit D)

On June 18, 2021, the claimant sent in magnetic resonance imaging results to the employer. The MRI results said the claimant had to speak with an orthopedist regarding whether he could return to work.

On July 21, 2021, the claimant was released to return to work. The claimant was still using crutches. Ms. Hansen informed the claimant that she had spoken with Mr. Grimes about this and told the claimant he could not work on crutches.

On August 3, 2021, the claimant was sent a letter informing him that since he had not certified the health reason for his leave, then his absences were not covered by the Family Medical Leave Act. The employer provided a copy of this letter. (Exhibit 10) That same day, the claimant received the certification paperwork from his physician. He put the information in another envelope, addressed it to the employer, and sent it back in the mail that same day.

On August 4, 2021, Ms. Hansen sent an email to the claimant stating that the employer would be terminating his employment under its attendance policy because it never received adequate certification of his health condition to approve him for FMLA. Ms. Hansen explained that they gave the claimant until the first week in July to obtain it and gave him an extension. The employer provided a copy of this email. (Exhibit 11) Ms. Hansen sent the claimant a letter stating he would be terminated that same day. The employer provided a copy of the letter. (Exhibit 13) The employer provided certified mail tracking demonstrating the claimant received the termination notice on August 10, 2021. (Exhibit 14)

On August 5, 2021, the employer received certification of the claimant's injury. This did not change the outcome because Ms. Hansen had already terminated the claimant.

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(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).

The employer contends the claimant was discharged due to excessive absenteeism. The employer has failed to meet its burden to show its reason is due to work-related misconduct. That is primarily because the employer concedes it was fully aware of the claimant's health condition throughout the period he was on leave. It also discharged him for absences it knew were due to personal illness. These absences are specifically excluded from the definition of misconduct in Iowa Admin. Code r. 871-24.32(7).

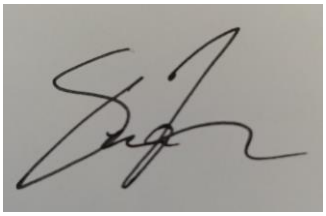
Alternatively, the employer contends the claimant violated its FMLA policy by failing to return the paperwork by the August 3, 2021 deadline. That may be sufficient to be terminated under the employer's policy, but the administrative law judge does not see anything in the record coming even remotely close to misconduct. It is possible for an employer to win under this theory, but not when the claimant is actively attempting to work and making efforts to obtain certification. The record, if anything, reflects that the claimant's physicians initially did not respond and then erred by sending the documents to the claimant. The claimant then corrected that error. Despite his efforts, the claimant was nevertheless terminated. Benefits are granted, provided he is otherwise eligible.

DECISION:

The September 29, 2021 (reference 01) unemployment insurance decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are granted, provided he is otherwise eligible.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue regarding whether the claimant was able and available for work effective August 4, 2021.



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Sean M. Nelson
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June 27, 2022
Decision Dated and Mailed

smn/mh