

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIKE T TOMLINSON
Claimant

UNIPARTS OLSEN INC
Employer

APPEAL 15A-UI-14171-DL-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/20/15
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 December 18, 2015, (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 January 15, 2016. Claimant participated. Employer participated through human resources coordinator, Sue Youtcheff.

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 most recently employed with Uniparts Olsen, Inc. full-time as a machine operator from October 19, 2015, and was separated from employment on December 3, 2015, when he was discharged. On September 21, claimant had been indefinitely laid off due to a lack of work without a guarantee of being called back to work because of his history of absenteeism. When he was recalled, he was reminded that his absenteeism had been a concern and his attendance would be closely watched. He reported missing work from November 16, through November 20 to help his grandmother in the hospital and transition to assisted living. His retired step-father and unemployed cousin also helped her. Youtcheff did not tell claimant his absences for this reason would be excused, only that she would notify his supervisor. His last absence was from November 30 through December 1 when he reported absences due to being tired. He did not claim it was a medical issue, but at hearing stated his medication is for panic attacks, anxiety and not sleeping. He did not see a doctor for an excuse, which the employer would have accepted. Claimant had health insurance with a copay. His doctor was only in the office on Wednesdays but he did not call or go to an urgent care clinic. He did not ask family or friends for money or transportation and did not consider a taxi or bus. His absences prior to the layoff were on August 10 (no child care), August 11 (ill), August 12 (“not able to make it in”), August 13 (no reason), August 14 (no excuse), August 17 through 21 (no reason), and August 24 (no reason). During each period of employment he did not have a documented

warning because the absences were accumulated quickly, although there is no reason a written warning could not have been issued between August 24 and September 19, or upon returning to work. The employer has a no-fault attendance policy that treats all absences the same, regardless of reason unless the employee provides a medical excuse or because of severe weather.

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 upon returning to work after a layoff period the claimant was alerted that his attendance was of concern and would be closely monitored. The final absence was reported as related to fatigue but not an illness or medical condition and there was no documentation that the absence was medically related even though claimant had health insurance. While claimant argues at hearing that he did not have money for a copay or transportation he did not make reasonable efforts to seek assistance with either at the time. Although his doctor was not in the office he made no effort to seek care at an urgent care center. Thus, claimant's belated claim the fatigue was related to a medical condition is not credible. Claimant was aware his history of absenteeism was of concern to the employer and still opted to take time off for non-emergency reasons after his grandmother was released from the hospital instead of helping his cousin and step-father outside of work hours. His attendance prior to the layoff was also unrelated to excusable illness except August 11. Thus, the final absence period in combination with the claimant's history of unexcused absenteeism is considered excessive. Benefits are withheld.

DECISION:

The December 18, 2015, (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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs