

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAZONDRA V HARRINGTON
Claimant

CBE COMPANIES INC
Employer

APPEAL 16A-UI-13492-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/16
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 13, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on January 11, 2017. The claimant, LaZondra Harrington, participated. The employer, CBE Companies, Inc., participated through Jon Primus, director of operations; Leslie Steimel, ; and Jordan Dirks, . Claimant's Exhibit A and Employer's Exhibits 1 through 7 were received and admitted into the record without 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, most recently as a collector, from July 9, 2001, until November 28, 2016, when she was discharged for absenteeism. Claimant's final absence occurred on November 25, 2016. Claimant called in and reported that she could not work that day due to a lack of child care.

Claimant testified that she left early several times during her employment due to a lack of childcare. The dates on which claimant left early due to a lack of childcare include October 7 (left 2.5 hours early); October 6 (left 2 hours early); and October 5 (left 2.5 hours early). Claimant also had absences for other reasons. Claimant was absent on November 23, 2016, due to personal illness and a lack of childcare. Claimant left early on October 10, 2016, because she was not feeling well. Claimant was absent for fifteen minutes on September 30, 2016, for an unknown reason. Claimant was absent 4.75 hours on September 28, 2016, for an unknown reason. Claimant received a warning on October 10, 2016, related to her attendance. She also received a warning on September 16, 2016, related to her attendance. Claimant was aware her job was in jeopardy due to her attendance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld.

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).

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 the claimant was warned that further improperly reported or unexcused absences could result in termination of employment. Claimant's final absence was related to a lack of childcare, which is an issue of personal responsibility and is unexcused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The December 13, 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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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