

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALISON HINKELDEY
Claimant

BEASTON CAMP KENNELS
Employer

APPEAL 21A-UI-23270-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/05/21
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant, Alison Hinkeldey, filed an appeal from the October 20, 2021, (reference 04) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2021. The claimant participated and testified. The employer participated through Operations Manager Erin Lord. Exhibit A was admitted into the record. The claimant submitted additional documents after hearing record was closed. This information was not considered because the record was closed.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a receptionist / dog handler for the employer, Beaston Camp Kennels, from February 16, 2021, until she was separated from employment on September 3, 2021, when she was discharged. The claimant's immediate supervisor was Operations Manager Erin Lord.

The employer has an attendance policy. The attendance policy operates on a points system. The attendance policy issues five points for an absence of an on-call shift of eight hours or longer in duration after being called in. Employees are to inform Ms. Lord at least two hours prior to the start of a shift. However, absences occurring on Fridays, Saturdays and Sundays result in an accrual of double the points. The attendance policy also states that the accrual of points is triple for absences occurring the day before, day of or after "New Years, Christmas, [the] Fourth of July, [and] Thanksgiving." The attendance policy does not list Labor Day or state this list of holidays is not an all-inclusive list. The claimant provided a copy of the policy which is

posted on the bulletin board. (Exhibit A) The claimant acknowledged receipt of the policy on February 16, 2021.

On September 3, 2021, the claimant worked her scheduled shift from 6:00 a.m. to 12:00 p.m. The claimant was also responsible for working an on-call shift from 1:00 p.m. to 6:00 p.m. because one of the other employees had called in sick. The claimant informed Kim Hautzenrader and Skyler Hansen that she would not be able to work the on-call shift. The claimant was not able to work the shift because her landlord said he would be fixing things in her apartment. Her landlord did not give her advanced warning that this would occur.

At 12:34 p.m. on September 3, 2021, Ms. Lord sent a text message to the claimant informing her that she could be terminated because it was a holiday weekend. At 12:51 p.m., Ms. Lord asked the claimant to call her and clarified that the claimant could be terminated for missing the on-call shift. At 2:26 p.m., Ms. Lord sent a text message to the claimant informing her that she would be terminated for not coming in for her on-call shift. The claimant did not answer her phone because she had already given notice to the employer and did not anticipate so many messages to respond to.

When an employee does not answer for an on-call shift, Ms. Lord has to find someone to cover the shift because the on-call shifts are supposed to plan in advance for employees not being able to cover shifts. There are approximately six to seven other employees who worked at that time. Ms. Lord ended up covering the majority of the claimant's shift on September 3, 2021. A new employee offered to stay an hour later to help cover the claimant's shift.

The claimant had not been disciplined for attendance incidents in the past.

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).

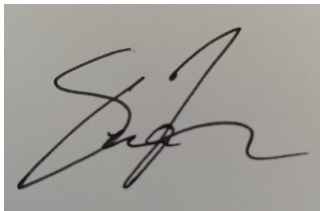
This case involves a single incident of attendance. As a result, the question in this case is whether the claimant's single absence constitutes excessive absenteeism as a matter of law.

Iowa courts evaluate cases with a single instance of attendance using the following four factors: (1) the nature of the claimant's work, (2) the effect of the employee's absence, (3) dishonesty or fabrication in regard to the unexcused absence, and (4) whether the employee made any attempt to notify the employer. See *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989)

The administrative law judge finds all four factors point against the claimant's absence constituting excessive absenteeism. The claimant's work is not such that her absence resulted in an emergency situation. While the effect of her absence resulted in an inconvenience to Ms. Lord, it had negligible impact beyond that, especially given a new employee offered to cover the first hour of the shift. The claimant did not fabricate her reason for being absent. Finally, the claimant informed two managers that she would not be able to cover the shift that day. Benefits are granted.

DECISION:

The October 20, 2021, (reference 04) unemployment insurance decision is reversed. The claimant was discharged for a non-disqualifying reason. Benefits are granted, provided she is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
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January 14, 2022
Decision Dated and Mailed

smn/kmj