**JUSTON A BENNETT**
Claimant

**SDH EDUCATION WEST LLC**
Employer

**APPEAL 17A-UI-00258-DL-T**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC:  05/15/16**
**Claimant:  Respondent  (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 employer filed an appeal from the December 30, 2016, (reference 03) unemployment insurance decision that allowed benefits based upon a discharge from employment.  The parties were properly notified about the hearing.  A telephone hearing was held on January 30, 2017. Claimant did not respond to the hearing notice instruction and did not participate.  Employer participated through General Manager, Casey Benton.  The administrative law judge took official notice of the administrative record, including fact-finding documents.

**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 as a full-time cook through December 1, 2016.  On November 29 claimant reported his last absence due to illness via text to Executive Chef, Steve Webber.  He had a history of attendance warnings for tardiness, lack of child care and other absences due to illness.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:
>        **Causes for disqualification.**
>        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 employer has the burden to prove the claimant was discharged for work-connected
misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*,
321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in
separating claimant, but whether the claimant is entitled to unemployment insurance benefits.
*Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes
misconduct justifying termination of an employee and what misconduct warrants denial of
unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job
Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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 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, supra.*
However, a good faith inability to obtain childcare for a sick infant may be excused.
*McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of
qualification for unemployment insurance benefits. Because his last absence was related to
properly reported illness or other reasonable grounds, no final or current incident of unexcused
absenteeism occurred which establishes work-connected misconduct. Since the employer has
not established a current or final act of misconduct, without such, the history of other incidents
need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The December 30, 2016, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.


_____
Dévon M. Lewis
Administrative Law Judge


_____
Decision Dated and Mailed


dml/rvs