

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY DOHSE
Claimant

WALMART INC
Employer

APPEAL 21A-UI-21111-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/01/21
Claimant: Appellant (4)

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On September 23, 2021, claimant Jeremy Dohse filed an appeal from the September 22, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was discharged due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Thursday, November 18, 2021. Appeal numbers 21A-UI-21111-LJ-T and 21A-UI-21112-LJ-T were heard together and created one record. The claimant, Jeremy Dohse, participated. The employer, Walmart, Inc., did not register and did not participate in the hearing. Claimant's Exhibit A was received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged from employment for disqualifying, job-related misconduct?
Was the claimant able to work and available for work?

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 an electronics associate, from July 2020 until August 3, 2021, when he was discharged. Human Resources employee Angela Delagrave called claimant and left him a voicemail message informing him that his employment had ended.

Claimant last reported to work on June 25, 2021. That day, claimant's mother died. Claimant requested and was granted a three-week leave of absence to mourn his mother's passing and to assist his grandparents, as his mother had been their primary caretaker.

Claimant was scheduled to return to work on Tuesday, July 20. However, he was not emotionally prepared to return to work at that time. He reached out to the employer and requested an additional three-week leave of absence. Store manager Brandon told claimant, "Sounds good, take as much time as you need." (Exhibit A) Claimant then completed the

paperwork through third-party leave administrator Sedgwick to request the additional leave with a return date of Tuesday, August 10, 2021.

Between Wednesday, July 21, and Wednesday, April 3, claimant did not receive any information from either the employer or Sedgwick. Neither Walmart nor Sedgwick ever requested any additional information or documentation from claimant to substantiate his leave of absence. Claimant contacted the employer's Associate Information Line each day he was scheduled to work and reported that he would not be at work, as he was on a leave of absence that was pending formal approval from Sedgwick. (Exhibit A)

Claimant had no prior warnings from the employer related to attendance. At the time he was discharged, he was not aware that his job was in any jeopardy. No one had asked him to come back to work or notified him prior to his date of discharge that his second three-week leave of absence was not approved.

Effective August 10, 2021, claimant was ready to return to work. He had talked to someone and felt emotionally prepared to return to working. Additionally, he had handled all of his grandparents' appointments and did not have additional caretaking responsibilities. Claimant was consistently in town, available during work hours, and looking for work during the weeks when he claimed unemployment insurance benefits. Claimant secured employment as an assistant store manager at a retail store on September 17, 2021, and he stopped filing for unemployment insurance benefits after that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed based on claimant's separation from employment.

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.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2)(1) and (2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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*, 321 N.W.2d at 6; *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*, 734 N.W.2d at 554. 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.

This case presents somewhat of a hybrid between a discharge due to absenteeism, a discharge due to an unapproved leave of absence, and a failure to re-employ following a leave of absence. Regardless of the category, however, the administrative law judge finds that the claimant was separated for no disqualifying reason. Claimant had properly applied for a leave of absence, he and was reporting his absences each day per the employer's policy. He had no instruction or indication from either the employer or Sedgwick that his absence from work was not acceptable; he had no warnings due to his attendance, he had never been told his job was in any jeopardy, and at no point did the employer ever request that he return to work. Based on the record, the employer has not established disqualifying misconduct, and benefits are allowed based on claimant's separation from employment.

The next question is whether claimant is able to work and available for work effective August 1, 2021. Claimant himself testified that he was not prepared to return to work until August 10, 2021. However, once August 10 arrived, claimant was fully prepared for resuming work. He had transportation, a clear schedule, and the physical and emotional capacity to return to the work force. The administrative law judge finds that claimant was not able to work for the one-week period ending August 7, 2021. Benefits are withheld for that one week. Thereafter, claimant was able to work and available for work, and benefits are allowed.

DECISION:

The September 22, 2021 (reference 01) unemployment insurance decision is modified in favor of the claimant. Claimant was discharged from employment for no disqualifying reason. Following his separation, claimant was not able to work for the one-week period ending August 7, 2021. Benefits are allowed effective August 8, 2021, provided he is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 28, 2021
Decision Dated and Mailed

lj/mh