

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY L NORBERG
Claimant

APPEAL 16A-UI-10694-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EGS CUSTOMER CARE INC
Employer

OC: 09/04/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 23, 2016, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 14, 2016. Claimant participated. Employer participated through human resource manager Sonia Johnson.

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 began working for employer on September 4, 2012. Claimant last worked as a customer service representative. Claimant was separated from employment on September 9, 2016, when she was terminated.

Claimant has a medical condition that affects her eyesight. Claimant is restricted from driving in heavy fog, heavy rain, heavy snow, and at night. Claimant submitted a doctor's note to employer listing these restrictions. Claimant asked employer to accommodate her condition. Claimant asked employer to allow her to be absent from work any time these weather conditions were present as claimant drove her own vehicle to work. Employer agreed to provide the accommodation.

However, claimant often asked for accommodations not authorized by her medical paperwork. For instance, claimant asked to call in absent to work on days it was only forecasted to rain, when there was light fog, or when it was overcast. Employer met with claimant on numerous occasions and explained that claimant was requesting to be absent for reasons not authorized by her doctor and that any absences or tardiness due to these requests were not approved.

From August 1 through August 24, 2016, claimant was tardy 22 times for reasons not medically excused. On August 24 and September 7, 2016, employer sat down with claimant and reminded her that any absences due to reasons not authorized by her medical paperwork were

not excused and warned her if she missed two more hours of work for an unexcused reason she would be terminated. Claimant stated she was going to submit new medical documentation excusing her from driving in a broader range of medical conditions. Before doing so, claimant was two hours late on September 9, 2016, because it was overcast. Employer terminated her employment the same day.

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.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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).

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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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. Absences due to properly reported illness are excused, 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. 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). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

In this case, claimant was repeatedly tardy or absent due to an issue of personal responsibility—commuting to work. Employer accommodated claimant's restrictions although it

is not clear it was legally required to do so. Even so, claimant was often absent for reasons not authorized by her doctor's note. Claimant was warned that if she continued to be absent for reasons not authorized by her doctor's note, she would be terminated. On September 9, 2016, claimant was absent for a reason relating to personal responsibility and not authorized by her doctor's note.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The September 23, 2016, (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as claimant is deemed eligible.

Christine A. Louis
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Decision Dated and Mailed

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