IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

AMY S GUY Claimant **MERCY MEDICAL CENTER-CLINTON INC** Employer	**APPEAL 18A-UI-06963-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/27/18** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 22, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2018. Claimant participated personally and was represented by Jon Geyer. Employer participated through human resource generalist Salena Hynes, former director of nursing Megan Kinney, and licensed practical nurse Melany Lyn Dann-Aadland. Employer's Exhibits 1 through 10 were received.

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 April 18, 2011. Claimant last worked as a full-time nurse assistant. Claimant was separated from employment on May 26, 2018, when she was terminated.

Employer has an attendance policy stating that employees will be terminated after accruing eight attendance points. Employees are required to report absences at least two hours prior to the start of the shift. The policy also states employees will be terminated after two no-call/no-show absences. Claimant was aware of the policy.

On June 15, 2017, claimant was absent due to an injury. The absence was properly reported.

On August 14, 2017, claimant was tardy for work.

On August 26, 2017, claimant was absent due to an injury. The absence was properly reported.

On March 16, 2018, claimant was absent due to illness. The absence was properly reported.

On March 29, 2018, claimant requested to use Paid Time Off (PTO) on May 23 and 24, 2018.

On April 9, 2018, claimant requested to use a Floating Holiday on May 25, 2018.

On April 9, 2018, director of nursing Megan Kinney wrote claimant a note stating she could take the time off on May 24 and 25, 2018, if she had enough available PTO, as she only had 3.65 hours remaining. Claimant accrued five to six hours of PTO every pay period, which is every two weeks. Claimant and Kinney had a conversation, wherein Kinney stated that as long as claimant was not absent from work before the requested dates, she should have enough accrued PTO to take the time off.

On April 19, 2018, claimant was absent due to her mother being ill. The absence was properly reported.

On May 11, 2018, claimant was absent and the absence was properly reported.

On May 17, 2018, claimant received a verbal warning for accruing 5.34 attendance points. On May 17, 2018, claimant went home early from work due to illness.

Claimant was absent on May 18, 19, and 20, 2018, due to illness.

On May 21, 2018, employer sent claimant a text message stating she could not return to work without a doctor's note excusing her recent absences. Claimant did not have a doctor's note, so she did not come to work that day.

On May 23, 2018, claimant had 1.6 hours of PTO remaining. Claimant had a no-call/no-show absence that day.

On May 24, 2018, claimant had a no-call/no-show absence.

On May 25, 2018, employer sent claimant a letter terminating her employment.

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.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. 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. Claimant's assertion that she believed she had been approved to take PTO on May 23 and 24, 2018, is not credible. Claimant was told on or about April 9, 2018, that if she did not take any days off before then, she could likely accrue the necessary PTO to have the days off and would be allowed to take them. However, claimant took many days off after that and exhausted her PTO. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The June 22, 2018, (reference 01) decision is affirmed. The 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.

_____
Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

_____
Decision Dated and Mailed

cal/scn