

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWNECA T TOWNSLEY
Claimant

APPEAL 19A-UI-03767-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GO DADDY SOFTWARE INC
Employer

OC: 09/30/18
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 3, 2019, (reference 03) 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 June 17, 2019. Claimant participated. Employer participated through employee relations specialist Kris Meyer.

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 December 10, 2018. Claimant last worked as a full-time consultant. Claimant was separated from employment on April 23, 2019, when she was terminated.

Employer has an attendance policy. Employees accrue sick time and are given two personal days per year. Employees must have sick time or a personal day available in order to have an unscheduled absence excused. Employees are required to call their supervisor and the attendance line before the end of the shift on which they are absent. Claimant was aware of the attendance policy.

Claimant's supervisor allowed claimant to notify him of her absences by text message.

On April 15, 2019, claimant was scheduled to work at 1:30 p.m. At 8:22 a.m., claimant sent a text message to her supervisor informing him that she could not be at work that day because her two-year old daughter had a fever. Claimant takes her daughter to a daycare center while she is at work. Like most daycare centers, the center would not accept her daughter until she had been fever free for 24 hours. Claimant explained this to her supervisor. Claimant also called the attendance hotline to report her absence.

Claimant is a single mother. Claimant does not have any family in the Cedar Rapids area and did not have another option but to miss work to care for her daughter.

Claimant came into work later that day to speak with her supervisor about her options for remaining employed as claimant had no available sick time or personal days. Claimant brought her eight year old son and two year old daughter with her. Claimant asked about applying for Family and Medical Leave Act (FMLA) leave. However, claimant did not qualify as she had not worked for employer for at least 12 months.

On April 23, 2019, employer terminated claimant for excessive absenteeism.

Claimant has had continuing issues with the health of her child. The Benefits Bureau has not issued an initial decision on whether claimant is unavailable for work for this reason.

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.

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 due to absenteeism, 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's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant's last absence was for reasonable grounds. Claimant had the choice between caring for her sick child or being charged with child neglect or endangerment if she left the child at home with her eight year old son. Although employer asserts claimant did not properly report the absence because she did not call the attendance line, I do not find that testimony credible. Claimant asserts she did call the attendance line and the testimony of employer's witness was based on second hand information she could not verify.

Because claimant's last absence was due to reasonable grounds and was properly reported, 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 May 3, 2019, (reference 03) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issue of whether claimant is available for work due to her child's continued health problems is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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