

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA L HOLMES

Claimant

ADVANCED DRAINAGE SYSTEMS INC

Employer

APPEAL 21A-UI-00428-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20

Claimant: Appellant (2)

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 claimant filed an appeal from the November 17, 2020, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for excessive unexcused absenteeism after being warned. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2021. The claimant Melissa L. Holmes participated personally. The employer Advanced Drainage Systems, Inc. participated through plant manager Jeremy Magley.

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 full time as a wash line operator from May 6, 2013, until this employment ended on August 5, 2020, when she discharged.

The employer has a no-fault attendance policy, which designates point values to attendance infractions. An employee is subject to discharge if they incur seven points within a twelve month period. Employees are also expected to notify the employer by telephone at least two hours prior to a shift if they are unable to work.

The employer assessed points to the claimant based upon the following absences:

August 14, 2019: absent (personal issue) (1 point)
September 11, 2019: left early (sick child) (½ point)
November 1, 2019: absent (illness) (1 point)
November 15, 2019 left early (illness) (½ point)
December 16, 2019 left early (illness) (½ point)
February 11, 2020: left early (illness) (½ point)
June 15, 2020: absent (illness) (1 point)

June 27, 2020 tardy (illness) (½ point)
August 3, 2020: called in (personal issue) (1 point)

The final absence was on August 3, 2020, when the claimant needed to go home due to a personal issue. This absence gave claimant 6½ points. In addition, employer imposed an additional “disciplinary point” on August 3, 2020, because claimant had received two written warnings for attendance in twelve months. On August 5, 2020, employer discharged claimant for receiving seven points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. “Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

In this case, the claimant had seven properly reported absences due to illness. Those absences would be excused based upon the reason and because the claimant properly reported. The claimant's absences on August 14, 2019 and August 3, 2020 would be considered unexcused based upon the reason. The claimant therefore had two unexcused absences before discharge.

Excessiveness by its definition implies an amount or degree too great to be reasonable or acceptable. Here, the employer has failed to establish the claimant was discharged for excessive unexcused absenteeism. Two unexcused absences are not disqualifying since they does not meet the excessiveness standard. Therefore, the administrative law judge concludes the employer may have good business reasons to discharge the claimant but has failed to meet its burden of proof of establishing the claimant was discharged for disqualifying misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however,

does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading to separation was misconduct under Iowa law.

DECISION:

The November 17, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie Adkisson
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February 22, 2021
Decision Dated and Mailed

sa/kmj