

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MISTY L HANNA
Claimant

SEABOARD TRIUMPH FOODS LLC
Employer

APPEAL 19R-UI-04562-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/19/18
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:

On April 23, 2019, the claimant filed an appeal from the April 18, 2019, (reference 05) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on July 1, 2019. The claimant, Misty L. Hanna, participated. The employer, Seaboard Triumph Foods, L.L.C., did not register a telephone number at which to be reached and did not participate in the hearing. Claimant submitted two documents for the hearing but they were illegible and were not admitted as exhibits.

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, most recently as a laborer, from December 26, 2018, until April 4, 2019, when she was discharged for absenteeism.

Claimant last reported to work on March 18, 2019. After that date, claimant contracted a stomach infection and was unable to work. Claimant missed work on March 19, March 20, March 21, March 22, March 23, the week of March 25, and April 1, April 2, and April 3. Claimant called in each day thirty minutes before her scheduled start time and reported that she could not work due to illness.

Claimant went to the doctor on March 20, 2019. She was excused from work by the doctor through the end of the week. Claimant attempted to return to work on Monday, March 25, 2019. However, several minutes after she arrived claimant got sick again and had to leave. She called the attendance line from the parking lot to report that she was not able to work that day due to illness. Claimant was also in contact with her union representative while she was absent. Claimant returned to the doctor on March 28, 2019. She received another doctor's note

excusing her from work for additional days. On March 29, 2019, claimant dropped off her two doctor's notes to the security office on the employer's premises.

Claimant was well and attempted to return to work on April 4, 2019. When she tried to badge into the workplace, her badge did not work. Claimant went to the security office and security gave her the number of Christine in Human Resources. Claimant got ahold of Christine, and Christine informed her that she had been discharged for improper medical documentation.

Claimant had no prior warnings due to her attendance. She was not aware that her job was in jeopardy for absenteeism. Claimant had a prior multi-day absence due to her son being hospitalized. She returned to work after that multi-day absence with a doctor's note and was allowed to continue working.

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, provided she is otherwise eligible.

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.

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.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. In this case, claimant's final absence was due to illness. Claimant called the attendance line and properly reported this absence to the employer. Additionally, claimant provided the employer with documentation excusing her absence. There is no evidence in the record that claimant improperly reported her absence. Because claimant's last absence was related to properly reported illness or other reasonable grounds, 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, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The April 18, 2019, (reference 05) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn