

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATIE L ANDERSON
Claimant

NORDSTROM INC
Employer

APPEAL 16A-UI-06426-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/15/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 6, 2016, (reference 01) unemployment insurance decision that denied benefits based upon excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on June 22, 2016. The claimant, Katie Anderson, participated and testified. The employer, Nordstrom Inc., participated through hearing representative, Michele Hawkins, human resource assistant, Jill McDowell, and packing assistant manager, Koty Fraiser. Employer's Exhibit 1 and 2 were received into evidence.

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 packing processor from October 17, 2012, until this employment ended on May 18, 2016, when she was discharged.

The employer has an attendance policy in place which provides that employees are terminated after reaching eight attendance points over the course of their employment. (Exhibit 2). Employees are given points each time they are absent, tardy, or leave early for any reason. If employees go 30 days with perfect attendance a point is taken off of their total. Claimant was aware of and understood this policy.

On April 6, 2016, claimant was notified in writing that she had 7.75 attendance points dating back to November 2012. (Exhibit 1). The notice included a warning that if claimant reached eight points she would be terminated. Over the course of her employment, including the last year, a majority of claimant's points were accumulated due to illness. The only points claimant accumulated that were not clearly attributed to illness were two points for leaving early on October 29 and December 29, 2015 and one point for an absence due to a family emergency on November 28, 2015.

On May 18, 2016, when leaving to go to work, claimant discovered her car would not work because the transmission had gone out. Claimant had no issues with her car prior to this, nor was there any indication that had she ever been late to or absent from work before due to car problems. Claimant immediately arranged for other transportation, but was still six minutes late to work. Claimant's tardy resulted in her being issued another quarter a point, bringing her up to eight points. Claimant was then terminated in accordance with the employer's policies. Claimant reported she believed, based on how other managers had treated her coworkers in the past, that she would be able to make up her missed time and offered to do so. Fraiser testified she was unaware of any such situation and that the policy is administered the same for all employees.

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.

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*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

An employer’s no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

Claimant was late to work due to unexpected issues with her car. There is no indication that claimant was regularly late to work due to transportation issues or had any reason to believe her car would give her trouble the morning of May 18. Once claimant realized she did not have transportation to work, she arranged for transportation, but was still six minutes late. There is nothing in the record to indicate that claimant could have foreseen that she was going to have car trouble or that her late arrival was otherwise volitional. Because claimant’s final absence was not of her own volition and it is reasonable under these circumstances that she was a few minutes late, her tardy is considered excused. Accordingly, benefits are allowed as no final or current incident of unexcused absenteeism resulting in work-connected misconduct has been established.

DECISION:

The June 6, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs