

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMONTEZ HAWKINS
Claimant

GENERAL MILLS OPERATIONS LLC
Employer

APPEAL 21A-UI-02295-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On December 27, 2020, the claimant, Amontez Hawkins, filed an appeal from the December 23, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephonic hearing was held on Wednesday, March 3, 2021. The claimant, Amontez Hawkins, participated. The employer, General Mills Operations, L.L.C., did not register a participant for the hearing and did not participate.

ISSUE:

Was claimant Amontez Hawkins discharged from employment due to 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 cereal process operator, from March 2019 until October 14, 2020, when he was discharged due to attendance points.

Claimant's final absence occurred on October 11, 2020. Claimant was scheduled to work at 3:00 a.m. that day. Claimant woke up after 4:00 a.m. and called his supervisor, Shane, at 4:11 a.m. to report that he overslept, was out of town dealing with a family emergency, and would not be at work. Shane told him that because he had called, the absence would not be treated as a no-call/no-show and given the full three attendance points. Rather, Shane would consider this an ordinary absence and award it only one attendance point. Shane then went to the work floor and told the employees he needed someone to stay over the end of the shift and cover because claimant would not be making it in to work.

When claimant arrived back at work, he was told that he was discharged and that his final absence was a no-call/no-show. Claimant had a bad working relationship with the HR manager, and he believes that she unfairly coded his final absence as a no-call/no-show so that he would be discharged.

Claimant had several prior absences and received attendance points for those absences. He explained that his prior absences were related to a back injury and back surgery. Claimant had back surgery prior to his one-year anniversary, at which point he received FMLA leave. Therefore, absences that would not have counted against him had they happened after one year of employment ended up counting against him. Claimant denies he had ever previously been late to work, and he denies ever having been given a warning that his job was in jeopardy due to his attendance.

REASONING AND CONCLUSIONS OF LAW:

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

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. A failure to report to work without prior, advance 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. In this case, claimant's final absence was at minimum an unexcused absence, as it was due to oversleeping and finding himself stuck out of town and hours away from work one hour into his shift. However, claimant provided unchallenged testimony that all of his other absences were related to properly reported illness or injury. Therefore, the administrative law judge finds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Benefits are allowed.

DECISION:

The December 23, 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.



Elizabeth A. Johnson
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March 9, 2021
Decision Dated and Mailed

lj/scn