IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

STEPHANIE C COUCHMAN Claimant **HENNIGES AUTOMOTIVE IOWA INC** Employer	**APPEAL 16A-UI-05960-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/01/16** **Claimant: Appellant (1)**

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 May 20, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on June 14, 2016. The claimant participated personally. The employer registered for the hearing but witness, Monica Cochran, was unavailable when called. Claimant exhibit A was admitted into evidence. Based on the evidence, the argument presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as a finisher and was separated from employment on April 27, 2016, when she was discharged for excessive absenteeism.

When the claimant began employment in October 2015, her son was four weeks old. Due to the claimant's son having RSV and pneumonia, the claimant estimated she missed approximately 11 days associated with trips to the doctor and hospital. The claimant reported she attempted to provide doctor's notes but they were not always accepted by the employer. The claimant reported she would properly notify the employer of absences ahead of her shift by calling the attendance line. Prior to discharge, the claimant was issued two written warnings for her attendance. The last warning she received was about two months before she was discharged. The final warning was issued in response to two consecutive no-call/no-shows that occurred due to the claimant oversleeping. The claimant was aware her job was in jeopardy but admitted it was difficult working the overnight shift and being a single mother to three children.

The final incident occurred when the claimant was tardy to her shift on April 22, 2016 due to oversleeping. Upon waking up, the claimant called her employer to report her tardy and arrived to work at 1:12 a.m. Her shift started at 11:00 p.m. She was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The law defines misconduct as:

> 1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
> 2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
> 3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979). 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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

In the specific context of absenteeism the administrative code provides:

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. 871 IAC 24.32(7); *See Higgins v. IDJS*, 350 N.W.2d 187, 190 n. 1 (Iowa 1984)("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 unexcused. *Cosper v. IDJS*, 321 N.W.2d 6, 10(Iowa 1982). Second, the unexcused absences must be excessive. *Sallis v. Employment Appeal Bd*, 437 N.W.2d 895, 897 (Iowa 1989).The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness."

The requirement of determining whether an absence is "unexcused" can be satisfied in two ways: An absence can be unexcused either because it was not for "reasonable grounds", *Higgins v. IDJS*, 350 N.W.2d 187, 191 (Iowa 1984), or because it was not "properly reported". *Cosper v. IDJS*, 321 N.W.2d 6, 10(Iowa 1982). In the case at hand, the claimant had approximately 14 absences in her six months of employment. Of the absences, the claimant estimated that 11 were associated with her infant son's illness. The claimant also credibly testified that she properly reported the absences related to her son's illness, by way of calling the attendance line and also offered doctor's notes. The administrative law judge is persuaded that the 11 absences due to her son's illness would be considered excused for unemployment purposes.

The claimant also had three additional attendance infractions related to oversleeping. The claimant reported she had two consecutive no-call/no-shows for oversleeping, which triggered her final warning. The final incident occurred on April 22, 2016, when the claimant overslept, causing her to be over two hours late to her shift. The administrative law judge is sympathetic to the claimant's balance of her personal and professional responsibilities, but the claimant failed to properly report those absences to the employer in a timely manner. Further, the court has found unexcused issues of personal responsibility such as "personal problems or predicaments other than sickness or injury. Those include oversleeping, delays caused by tardy babysitters, car trouble, and no excuse." *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 191 (Iowa 1984). Therefore, the administrative law judge concludes the claimant had three unexcused absences during her employment.

Excessiveness: Having identified the unexcused absences, including the final one, the second issue is whether the claimant's three unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The law provides:

Past acts of misconduct. While past acts and warning can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.871 IAC 24.32(8); *see Ray v. Iowa Dept. of Job Service*, 398 N.W2d 191, 194 (Iowa App. 1986); *Greene v.EAB*, 426 N.W.2d 659 (Iowa App. 1988); *Myers v. IDJS*, 373 N.W.2d 509, 510 (Iowa App. 1985). A final warning or last chance agreement may operate to reduce the protections of a claimant as compared to other employees. *Warrell v. Iowa Department of Job Service*, 356 N.W.2d 587 (Iowa App. 1984). Specifically,"[h]abitual tardiness, particularly after warning that a termination of services may result if the practice continues, is grounds for one's disqualification." *Higgins v. IDJS*, 350 N.W.2d 187, 192 (Iowa 1984)(quoting *Spence v. Unemployment Compensation Board of Review*, 48 Pa.Cmwlth. 204, 409 A.2d 500 (1979).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. The claimant worked for this employer for six months and had 14 absences. Of

those absences, three were unexcused and due to oversleeping, including two no-call/no-shows and the final incident of the claimant being over two hours late to her shift. Even if the 11 absences due to her son were excused, as being properly reported and for illness, three infractions in six months is excessive. The evidence presented has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The May 20, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

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