

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JENNIFER KNOWLES**  
Claimant

**BEMIS COMPANY INC**  
Employer

**APPEAL 16A-UI-09117-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/31/16**  
**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 August 16, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on September 8, 2016. The claimant Jennifer Knowles participated and testified. The employer Bemis Company Inc. participated through Human Resource Generalist Amanda Inman.

**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 bag machine operator senior from August 27, 2009, until this employment ended on August 1, 2016, when she was discharged.

The employer has a policy in place which allows employees up to seven attendance occurrences within a calendar year before any disciplinary action is taken. At seven occurrences employees receive a corrective action. When employees reach eight occurrences they are given a formal verbal warning and must go 12 months without an occurrence before any occurrences fall off. A written warning is issued at nine occurrences and termination is possible at ten occurrences. Employees must call in and notify the employer as soon as possible if they are unable to come in for a scheduled shift. Claimant was given a copy of this policy as part of the employee handbook.

Claimant was most recently absent from work on July 28 and 29, 2016 due to illness. Claimant called in and notified the employer that she would not be in to work both dates. Claimant's July 28 absence put her over ten occurrences and her absence the next day put her at 11.5 occurrences. Claimant was most recently warned about her attendance on July 25, 2016 via

written warning. The warning advised claimant that further occurrences would lead to termination. The decision was subsequently made to terminate claimant's employment.

### **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 section 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.

871 IAC 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.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant was absent from work on July 28 and 29, 2016 due to illness. Claimant called in and properly reported her absences to the employer each day. Because her 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, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The August 16, 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/