

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA K MCGAFFEY
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 19A-UI-02077-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/10/19
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:

The claimant filed an appeal from the February 27, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephonic hearing was held on March 26, 2019. The claimant, Angela K. McGaffey, participated. The employer, The University of Iowa, participated through witness Dale Winnike, Nursing Manager, and Mary Eggenburg, Benefits Specialist.

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 clinical technician 1, from January 2, 2008, until February 5, 2019, when she discharged for absenteeism and improperly calling off for her shifts. The employer's policy states that an employee must call off for her scheduled shift at least two hours prior to the start of the shift.

Claimant's final absence occurred on January 29, 2019. Claimant did not report to work that day because her car would not start, due to the extreme cold weather. Claimant called in at 9:24 p.m. for her shift that started at 11:00 p.m. Claimant did not go to work on January 15, 2019, because her car ended up getting stuck in the snow on her way to work. Claimant called in at 6:03 a.m. for her 7:00 a.m. shift that day. Claimant did not go to work on January 3, 2019, due to illness. She called in at 5:08 a.m. for her 7:00 a.m. shift that day.

Claimant had received multiple warnings due to her attendance. She was disciplined for calling off late in June 2017. She received discipline on June 15, 2018, for excessive use of sick time hours. She received discipline again on November 28, 2018, for excessive use of sick time hours. Claimant was notified that her job was in jeopardy due to her absenteeism.

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

In this case, it is unclear whether claimant’s final absence – the January 29 absence due to her car not starting – is unexcused. While generally an absence due to lack of transportation would not be excused, the weather may be a sufficient extenuating circumstance to excuse this absence. However, even if claimant’s final absence was not excused, the employer has not shown that her absences were both excessive and unexcused. The employer may have felt claimant’s absenteeism was excessive, but the vast majority of her absences were due to illness. She had one additional absence due to caring for a sick family member, and she had one additional absence due to her car getting stuck in the snow on her way to work. The administrative law judge finds that claimant’s absence due to her car getting stuck in the snow was excused. Therefore, the employer has only established that claimant had at most two unexcused absences. Two absences does not amount to excessive absenteeism. Therefore, the employer has not established that claimant was discharged for excessive, unexcused absenteeism. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The February 27, 2019, (reference 01) 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