

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANGUM L AWNGOAM
Claimant

DEE ZEE INC
Employer

APPEAL 16A-UI-05800-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/24/16
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 May 12, 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 9, 2016. The claimant participated personally and with Arabic interpreter, John, of CTS Language Link. The employer participated through Lacey Leichliter, human resources representative. Based on the evidence, the arguments of the parties, 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 an assembly person and was separated from employment on April 26, 2016, when she was discharged for excessive absenteeism.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving 40 points based on a prorated one-year period. The claimant was made aware of the employer's policy at the time of hire. Employees are permitted to check their accumulated points through the payroll system.

At the time of separation, the claimant had 62 points. The claimant had a two-year-old son with asthma who was repeatedly hospitalized, and the claimant missed work repeatedly due to his illness. The employer reported the claimant's absences to have occurred November 3, 4, 5, 6 and 9, December 9, January 5, February 2, 3, and 4, and March 18, 2016. The claimant was previously issued written warnings on November 12, 2015 and February 4, 2016. The final incident occurred when the claimant was unable to leave her son at the hospital unattended,

and on March 18, 2016, called the employer to notify that she was at the hospital with her son, running late. The claimant repeatedly offered to furnish medical documentation to support her absences but since she did not qualify for FMLA, doctor's notes were not considered. She was subsequently discharged on April 26, 2016. The reason for the delay in separation was unknown.

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 of proof in establishing disqualifying job misconduct. 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). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Absences must be both excessive and unexcused to result in a finding of misconduct. In this case, the claimant exceeded the permissible attendance points/infractions permitted by way of the employer's policy. The undisputed evidence is the claimant was issued two warnings about her attendance on November 13, 2015 and February 4, 2016, but repeatedly missed work due to her minor child who was repeatedly hospitalized. The evidence supports the claimant reported her absences and offered medical documentation to support them as well. The final incident occurred on March 18, 2016, when the claimant called the employer to report she was running late, due to being at the hospital with her son. Cognizant of the claimant's frequent absences and that she was not eligible for FMLA, the employer has not established that the claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the 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, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The May 12, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs