

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AERIOL D BROOKS
Claimant

CBE COMPANIES INC
Employer

APPEAL 15A-UI-09850-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/15
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the August 27, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon the determination the employer failed to provide sufficient evidence to show the claimant was discharged for disqualifying job-related misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 15, 2015. Claimant Aeriol Brooks did not participate. Employer CBE Companies, Inc. participated through Chief Human Resources Officer Mary Phillips, Senior Operations Manager Amanda Hilmer, and Supervisor Amber Kleiner. Employer's Exhibits 1 through 5 were received.

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 from May 12, 2014, and was separated from employment on August 3, 2015, when she was discharged. The employer has an intricate attendance policy. It is a point system that results in corrective discipline for every ten points accumulated with written warnings issued on points 30, 40, and 50. Points accumulate even when the employee is approved for the time off if he or she does not have paid time off (PTO) to cover the absence. Additionally, a written warning is issued for any day of no-call/no-show or other more severe attendance infractions. An employee who receives three written warnings in a six-month timeframe is discharged from employment.

On May 19, 2015, the employer issued the claimant a written warning for accumulating 30 points. (Employer's Exhibit 3). The claimant had accrued her points primarily for arriving to work late, not returning from break on time, and not having adequate PTO to cover her absences. On June 14, 2015, the claimant received a written warning for failing to report to work with no notice to the employer. (Employer's Exhibit 2). She was put on notice that any further incidents related to attendance would result in her termination.

In July 2015, the claimant requested to take July 31, 2015 off as she was going to begin a new job with another employer on the weekends. The claimant was approved for the time off. However, she did not have enough PTO and accumulated additional attendance points which resulted in her points balance exceeding 40 points. She received her third written warning in a six-month period and she was discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$230.00, since filing a claim with an effective date of August 2, 2015, for the week ending August 8, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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

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. 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*.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The claimant gave notice for her absence when she requested the time off; therefore, it was properly reported. However, her absence was to begin employment with another employer which is an issue of personal responsibility. Therefore, the absence was

not for reasonable grounds and is considered unexcused. The employer has credibly established that 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 claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The August 27, 2015, (reference 01) decision is reversed. The 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.

The claimant has been overpaid unemployment insurance benefits in the amount of \$230.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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