

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BENJAMIN A HEINTZLEMAN
Claimant

APPEAL 15A-UI-13867-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

**OC: 11/22/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 14, 2015 (reference 01) unemployment insurance decision that denied benefits because of discharge from work for excessive unexcused absenteeism after being warned. After due notice was issued, a telephonic hearing was held on January 11, 2016. Claimant Benjamin A. Heintzleman participated. Employer Wells Fargo Bank NA participated through hearing representative Steven Zaks, contact center manager Eric Egeberg, and contact center manager 2 Jim Kerschke. Employer's Exhibit A was admitted.

ISSUE:

Did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an inbound sales specialist from August 20, 2012 and was separated from employment on September 25, 2015; when he was terminated.

The employer maintains a policy regarding medical leaves of absence for employees (Employer's Exhibit A, Page Four). This policy indicates that while an employee is on a medical leave of absence, he is expected to stay in contact with his manager, read all communications he receives from the employer and claims administrator, and verify that the health care provider has submitted all necessary paperwork (Employer's Exhibit A, Page Four). The employer's Team Member Handbook discusses the transition period from an approved leave of absence to an unapproved leave of absence (Employer's Exhibit A, Page Nine). This provision states that an employee who is absent from work for more than seven consecutive days and who fails to provide required documentation in support of his leave of absence falls out of compliance with the employer's leave policies (Employer's Exhibit A, Page Nine). Once this occurs, the employee's leave and related benefits are denied, and the absences will be considered unapproved leave subject to corrective action up to and including termination (Employer's Exhibit A, Page Nine).

Claimant began a medical leave of absence in November 2014, in connection with early-onset dementia. In May or June 2015, claimant lost his insurance coverage and he was not able to see his health care provider; so he was not submitting the necessary paperwork and his long-term disability claim was closed. Egeberg testified that claimant was discharged on September 25, 2015 because he had an unapproved leave of absence from May 2, 2015 forward. Claimant received documentation from Liberty Mutual in November 2015 that he was no longer a team member with the employer. Claimant testified that his therapist and doctor have not yet cleared him to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for excessive unexcused absenteeism. Benefits are denied.

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).

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. 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

The claimant failed to contact the employer after his long-term disability claim was closed in summer 2015. He did not notify anyone that his claim had been closed because of an insurance lapse that prevented him from seeing his physician and he did not report that he remained unable to work and under his doctor's care. The employer discharged the claimant after approximately three months of absences that were not properly reported. The employer met its burden to show that the claimant was discharged for disqualifying misconduct. Benefits are denied.

DECISION:

The December 14, 2015 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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