

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRENDA K HOFFMAN**  
Claimant

**DM SERVICES INC**  
Employer

**APPEAL 16A-UI-04888-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/10/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated April 25, 2016 (reference 01) that denied benefits. Notice of the hearing was mailed to the parties' last-known addresses of record, for a telephone hearing to be held at 10:00 a.m. on May 11, 2016. The claimant participated personally. The employer participated through Rachel Leonard, Human Resources Administrator. Claimant's Exhibit A was admitted into evidence. 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 part time as a credit specialist and was separated from employment on March 23, 2016, when she was discharged for excessive absences.

The employer tracks attendance occurrences based on a ratio of the amount of unexcused time an employee misses against their total scheduled hours. Employees are expected to remain under 15 percent or are subject to discipline. The claimant was made aware of the employer's policies at the time of hire. Further, the claimant was furnished a copy of her absence percentage/ratio in a bi-weekly attendance report.

On December 14, 2015, the claimant was issued a 90-day probation for her attendance and at that time she was made aware that she would start fresh with 0 percent as her ratio of absences to hours worked. In a follow up meeting on January 8, 2016, the claimant was at .03 percent. In a second follow up meeting, the claimant's ratio was .02 percent. In a third follow up meeting with her manager on February 29, 2016, the claimant was at 4.09 percent based on three absences she had on January 30, February 3, and February 8, 2016. All absences were due to personal illness or a family member. The claimant had close family member pass away on February 9, 2016 and was denied a personal leave of absence.

The final incident occurred on March 5, 2016, when the claimant called off work. The claimant properly called off the shift and had two personal days remaining to cover the absence but because the employer reported that because it was a pre-designated “blackout” day, in which employees could not take off time without it being counted as unexcused; the claimant’s absence counted as unexcused and pushed her over the allotted percentage allowed. The claimant was unaware that the day was designated as a “blackout day” and was not informed when she called off that it would be considered unexcused. The claimant subsequently did not perform work due to call outs from March 13 until 23, and was then discharged upon return to the office.

### 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 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).

The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp’t Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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.” 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. The claimant was issued a warning on December 14, 2015 for being above the acceptable absence to work performed ratio.

The second requirement, however, is 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. All but one of the claimant's absences attributed to her discharge were associated with illness of herself or family. Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Of the four absences that contributed to the claimant's separation (January 30, February 3, February 18, and March 5), only the final absence was due to personal reasons that would not be considered excused for purposes of unemployment eligibility. The claimant properly reported her absence on March 5, 2016, when she elected to take one of two remaining vacation days. The claimant learned after the fact that it was not an excused absence because it was a pre-designated "black out day". It is concerning that the manager accepting the claimant's call off would not warn her that her absence would be excused even if she had personal time to cover it. Because the absence was on a "black out" day, it was determined to be unexcused, thereby pushing the claimant over the threshold of acceptable attendance in terms of absences against time worked. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because her absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. 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 April 25, 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. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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