

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELINE RAY
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 15A-UI-03369-KC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/01/15
Claimant: Appellant (2)

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 March 10, 2015, (reference 01) unemployment insurance decision that denied benefits based upon excessive unexcused absenteeism. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2015. The claimant participated. The employer did not participate.

ISSUE:

Was the claimant discharged for disqualifying, work-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, on assignment, as a laborer sander beginning August 26, 2014, and was separated from employment on January 26, 2015, when she was told her employment was terminated.

The final absence occurred on or about October 20, 2014, when the claimant was returning from her son's funeral that was out of state. The absence had been approved by the plant supervisor Ken Parcher and Jody with Express Services. The claimant and her husband, who both had an assignment in the same facility, missed the same number of days. The claimant and her husband returned to work on or about October 21, 2014. She had no unexcused absences after she returned from her son's funeral.

The claimant continued to work full time at the facility until January 26, 2015, when the new plant supervisor told her that they were reevaluating individuals and she had been absent too much. Her assignment was ended. She had not received any prior warnings about attendance or absenteeism. Her absences had been approved by the prior supervisor. The claimant had received an employee handbook. She was not informed by the staff at the assignment or the employer that her job was in jeopardy.

The same day that her assignment ended, the claimant contacted the employer and requested a new assignment. She was told that she would not receive a new assignment because of excessive absenteeism, however, if she worked elsewhere and had a good reference, she could return in six months.

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." 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.

In this matter, the claimant's absences were properly reported and were for reasonable grounds in that she needed to take care of matters immediately after her son's sudden death and later for his funeral that was out of state. The claimant returned after the funeral and continued to work full time for several months. The employer did not inform the claimant that her job was in jeopardy or that her conduct regarding attendance had to change at any time prior to the separation.

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.

Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The March 10, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/css