

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMIE L REED
Claimant

BUCKS INC
Employer

APPEAL 16A-UI-03004-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/14/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 3, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for excessive, unexcused absenteeism after being warned. The parties were properly notified of the hearing. A telephone hearing was held on March 30, 2016. The claimant, Jamie L. Reed, participated. The employer, Buck's Inc., participated through Shari Leinbaugh, Human Resources Director, and Brandon Weeks, Area Supervisor. Employer's Exhibits A, B, and C were received and admitted into the record over claimant's objection that the documents contained incorrect information.

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: Claimant was employed full time as a sales associate from May 27, 2015, until this employment ended on February 16, 2016, when she was discharged.

Claimant was discharged due to absenteeism. Her final absence occurred on February 16, 2016. Claimant called in before her shift began to report that she was ill and spoke to manager, Ed Ganser. Claimant testified that Ganser told her she was discharged because she missed three days of work as a no-call/no-show. Claimant testified that she called in for all her absences and she gave Ganser a doctor's note to excuse her absences, but she also provided conflicting and confusing testimony about the dates listed on her doctor's note. Claimant denies any knowledge of an attendance policy.

Claimant had been absent on February 10 and February 11, 2016. Leinbaugh testified that claimant called in less than two hours prior to her shift on February 11 and failed to speak to a manager that day. Claimant testified she called in at the proper time and only spoke to a non-manager because she could not reach the manager. Weeks testified that Ganser had

spoken with him about claimant's attendance issues. Weeks recalled that Ganser told him claimant usually reported that she was not coming in because she was sick.

The employer testified that claimant received a write-up on February 10 related to her calling in. At this time, Weeks testified that Ganser told claimant she needed to submit a doctor's note to properly excuse her absences. Claimant denies receiving a write-up related to her attendance.

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). 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 employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant’s last absence was related to properly reported illness. As Ganser did not participate in the hearing, there is no firsthand testimony to refute claimant’s claim that she called in and reported she was sick. Therefore, 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, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The March 3, 2016, (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. Benefits withheld based upon this separation shall be paid to claimant.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/css