

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JAMES E MILES**  
Claimant

**CENTER REDEMPTION INC**  
Employer

**APPEAL 15A-UI-01490-KCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/18/15  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 2, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 3, 2015. The claimant participated. The employer participated through Shannon Moller, manager and employer representative. Mary Larmore, was sworn in as a witness but she did not testify. Exhibit 1 was received into evidence.

**ISSUE:**

Was the claimant discharged for work-related, disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed 30-40 hours per week as a sorter/driver. He began his employment with Center Redemption on August 1, 2011 and he was separated from employment on January 19, 2015, when the employer terminated his employment.

The claimant received a three-day, unpaid suspension on August 28, 2014. At 7:01 a.m. on August 25, 2014, the claimant sent a text message to his supervisor. He stated that his former wife had not yet arrived to pick up his young son and so he would be late. He was scheduled to start work at 7:00 a.m. Moller sent him a text message stating that he had to be at work by 8:15 or 8:20 a.m. The claimant called back and said that he had no one else to care for his son. Moller told him that was not her problem and advised him that he was on a three-day, unpaid suspension. The claimant signed the written warning notice on August 28, 2014, when he returned to work. Termination was the stated consequence if the incident should occur again. The nature of the incident was not further described. (Exhibit 1)

The employer has a written attendance policy which is not posted at work, the claimant does not have a copy of the policy, and the employer did not submit a copy of the policy. The employer read a portion of the policy into the record which indicated that employees could face warnings, suspensions and termination for violation of policy. Moller identified nothing in the policy which

would inform an employee of a particular consequence, such as a three-day, unpaid suspension, which was connected to a specific violation of the policy. Moller had warned other employees about various policy violations. She denied having imposed a three-day suspension on other employees, for any reason, during the last year that the claimant was employed.

On Saturday, January 17, 2015, the claimant did not present to work for his three-hour shift which started at 9 a.m. Moller attempted to reach him by phone just before 9 a.m. The claimant's voicemail was full. She called another employee to cover the shift. She later found a text from the claimant apologizing for the absence. His cell phone was not charged and so he was not awakened by the alarm feature. The claimant went to work on Monday, January 19, 2015. He worked with another employee and also went to Moller's office in an attempt to speak with her. She indicated that she was in a meeting. Later, she called him into the office and terminated his employment.

### **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.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. The claimant's report to his employer on August 25, 2014, that he would be late because his former wife had not picked up his child, was an absence that is considered reasonable under the circumstances. His unreported absence on January 17, 2015, because he did not wake up was not considered excused.

When the claimant's absences are considered, the employer has not met the burden of proof to establish misconduct. Benefits are allowed.

**DECISION:**

The February 2, 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.

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Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

kac/pjs