

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FELISHA M LOTT
Claimant

MEDIACOM COMMUNICATIONS
Employer

APPEAL 17A-UI-11232-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/08/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Felisha M. Lott (claimant) filed an appeal from the October 30, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Mediacom Communications (employer) discharged her for excessive unexcused absenteeism and tardiness after being warned. The parties were properly notified about the hearing. A telephone hearing was held on November 20, 2017. The claimant participated personally. The employer participated through Supervisor of Human Resources Lisa Wilbin and Senior Manager Mediacom Business Support Patrick Horrell, Sr. The Employer's Exhibit 1 was received without objection.

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 full-time as a Commercial Support Specialist I beginning on June 20, 2016, and was separated from employment on October 13, 2017, when she was discharged.

The claimant experienced many personal struggles during her employment that affected her ability to attend work. On March 20, 2017, she was given a verbal warning related to absenteeism. The claimant then missed two days of work. On April 22, she missed work for personal reasons. On April 25, she missed work due to her own personal illness.

On May 3, 2017, the claimant received her first written warning for absenteeism and tardiness. The claimant missed work on June 8 and 9 as she was being evicted and needed some time to arrange for housing for her and her children. The employer gave the claimant the phone number of its Employee Assistance Program (EAP); however, the claimant contacted the EAP and found it to be unhelpful. On June 27 and July 8, the claimant missed work due to personal issues.

On July 15, 2017, the claimant missed work due to her personal medical issues. On July 19, 2017, the claimant received a final written warning related to absenteeism and a written warning for tardiness. She was notified that further absences could result in her discharge. She was also offered the contact information for the EAP but declined as she did not believe it would be helpful based on her prior experience.

The claimant missed work on August 1 due to a personal issue. On August 5, the claimant missed work as her son had been arrested in another state and she needed to pick up her grandchild. The claimant also continued to arrive to work tardy on occasion. On August 19, 2017, the claimant received another written warning for tardiness.

On September 9, the claimant missed work due to illness. On September 12, the claimant missed work due to her child being ill. On September 26, the claimant missed work due to her own illness. On September 30, the claimant was a no-call/no-show for her shift. She woke up with a migraine and arranged for her adult son to drive her other children to school; however, she went back to bed before notifying the employer that she would not be at work. The claimant also continued to arrive to work tardy on occasion.

On October 3, 2017, the claimant received a final written warning related to tardiness. She was informed at that time any further tardiness or absenteeism could result in her discharge. Around the same time, the claimant moved her personal residence and was required to drive her four children to three different schools. Additionally, her teenage son began to experience issues at school with bullying. The claimant arrived 15 to 43 minutes late to work on October 4, 5, 6, 10, and 11 due to the issues related to her son and transporting her children to school.

On October 7, 2017, the claimant was a no-call/no-show. She had gone to the hospital with food poisoning the night before. Early in the morning on October 7, the claimant arranged for someone to pick her up from the hospital and take her home. She then went to sleep and did not wake up due to the pain medications she had been given. She notified the employer of her absence at 3:22 a.m. the following day.

On October 12, the claimant did not arrive for her 10:30 a.m. shift. At 2:29 p.m. that afternoon she sent an email to her supervisor stating that meetings regarding her son ran late and then she learned that her son had been talking about harming himself. She contacted a medical provider and was able to get him an appointment that afternoon and she would not be at work. On October 13, the claimant missed work as her son had another appointment regarding his issues. She did report to work at some point to complete termination paperwork.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or

wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 the 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); 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 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 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, supra*.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The claimant's absences on April 25, July 15, September 9, and September 26 were related to her own illness and were properly reported. These absences are excused.

The rest of the claimant's absences are unexcused for multiple reasons. The claimant had four absences which were for personal reasons and are not excused. The claimant also missed two

days due to an eviction, one day due to her adult son's arrest, and one day due to a sick child. Even though the absences were properly reported, they are issues of personal responsibility and are not excused.

On September 30, the claimant missed work due to a migraine which she contends left her physically incapable of notifying the employer of her absence prior to the start of her shift. However, the claimant was physically capable of contacting her adult son and arranging to have him drop his siblings off at school. It is not reasonable to believe the claimant was physically incapable of notifying the employer of her absence. The claimant's absence on that day, while due to illness, was not properly reported and is not excused.

The claimant had five incidents of tardiness between October 4 and 11 due to driving her children to school or dealing with issues with her son at his school. These are not excused absences as they are issues of personal responsibility. Additionally, the claimant did not arrange to be tardy in advance or notify the employer she would be tardy before the start of her shift.

The claimant missed work on October 7 as she had gone to the hospital for food poisoning the night before. The claimant contends she was unable to contact the employer due to the medication the hospital gave her. However, early in the morning of October 7, before the start of her shift, the claimant arranged to have someone pick her up from the hospital and drive her home. It is not reasonable to believe the claimant was physically incapable of notifying the employer of her absence prior to the start of her shift. The claimant's absence on that day, while due to illness, was not properly reported and is not excused.

The claimant notified the employer she would be missing work on October 12, but it was four hours after the start of her shift. She was tardy to work as meetings about the issues her son had at school ran long. She did not notify the employer prior to the start of her shift that she would be late. The claimant then returned home before reporting to work and learned her son had mentioned harming himself to fellow students. She felt she needed to get him immediate medical attention and found a doctor that could see him later that afternoon. The claimant missed work the following day due to another doctor's appointment for her son and she did not report her absence to the employer. The claimant missed work for reasonable grounds; however, she did not properly report her absences to the employer and they are not excused.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The October 30, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn