

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

APRIL ALDRICH
Claimant

APPEAL 21A-UI-01985-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARTY CITY CORPORATION
Employer

**OC: 10/11/20
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the December 18, 2020, (reference 01) unemployment insurance decision that awarded benefits based upon the conclusion that work-related misconduct was not proven. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2021. The claimant did not participate. The employer participated through Hearing Representative Thomas Kuiper and General Manager Xaviera Love. The administrative law judge took official notice of the administrative record.

ISSUES:

1. Whether the claimant was discharged for deliberate work-related misconduct?
2. Whether the claimant was overpaid benefits?

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 sales associate from September 5, 2016, until this employment ended on February 28, 2020, when she terminated. The claimant's immediate supervisor was General Manager Xaviera Love.

The employer's absentee policy requires employees to report they are absent for a shift at least two hours prior to the shift occurring to a manager on duty. Absences related to illness are excused. This absentee policy is in the employee handbook. The claimant received and acknowledged receipt of the employee handbook.

On January 25, 2020, Ms. Love gave the claimant a final warning for excessive absenteeism after she had been absent without giving prior notice. In particular, the claimant was late a total of 10 days, left her shift early a total of six days, and she was tardy on sixteen days. These specific dates are described at the end of the findings of fact.

On February 1, 2020, Ms. Love gave the claimant a final verbal warning because she walked out of the store on a busy day.

On February 21, 2020, Ms. Love terminated the claimant for excessive absenteeism. Earlier that day, the claimant was absent for a scheduled shift without giving proper notice. Ms. Love informed the claimant of her discharge. The claimant did not provide a response.

The claimant's attendance infractions fell into three categories, tardy incidents, leaving early without prior approval, and being absent without notice. The specific dates the claimant engaged in these attendance infractions are listed chronologically in their respective categories below:

In the month of January 2020, the claimant was tardy 10 times. Following are the dates the claimant was tardy: January 6, January 10, January 18, January 19, January 20, January 23, January 24, January 26, January 30 (45 minutes), and January 31, 2020 (47 minutes). The employer's records did not record the duration of tardy incidents occurring prior to January 30, 2020.

From December 20, 2019 to February 22, 2020, the claimant was absent without providing notice 13 times. Following are the dates the claimant was absent without providing notice: December 20, December 21, December 23, December 23, 2019, January 4, January 5, January 17, January 25, January 26, January 28, February 2, February 3, February 21, and February 22, 2020.

From January 6, 2020 to February 1, 2020, the claimant left early six times without prior approval. Following are the dates the claimant left early without prior approval: January 6, January 23, January 24, January 30 (thirty minutes), January 31 (one hour), and February 1, 2020 (four hours).

The administrative records show the claimant has not received benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for work-related misconduct. Benefits are denied. The claimant has not been overpaid benefits.

Iowa Code section 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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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.

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.

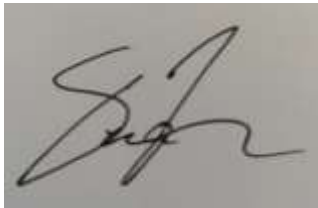
Second, the absences must be unexcused. *Cosper* at 10. The requirement of “unexcused” can be satisfied in two ways. An absence can be unexcused either because it was not for “reasonable grounds,” *Higgins* at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper* at 10.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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 v. Iowa Dep’t of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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

DECISION:

The December 18, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. The claimant was discharged from employment due to job-related misconduct. The claimant has not been paid benefits. 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.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 10, 2021
Decision Dated and Mailed

smn/ol