

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

D'ANGELO ALLISON
Claimant

KRAFT HEINZ FOODS COMPANY
Employer

APPEAL 17A-UI-01215-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/11/16
Claimant: Appellant (1)

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 January 23, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on February 22, 2017. The claimant was available to participate at the beginning of the hearing, but his cell phone battery died during the administrative law judge's opening statement and he was unable to give testimony or hear any testimony given by the employer. Prior to losing claimant from the hearing call the administrative law judge asked if there was an alternative number he could be reached at in case the call was lost, but none was given. Claimant was advised that, as it was the scheduled hearing date and time, the hearing would continue. Claimant did not call back in to participate at any time while the record was still open. The employer participated through Human Resource Generalist Amy Matlick. Employer's Exhibits 1 through 6 were received into evidence.

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 production team member from April 11, 2016, until this employment ended on December 9, 2016, when he was discharged.

The employer has a points-based attendance policy in place. (Exhibit 1). Claimant received a copy of this policy upon his hire. (Exhibit 6). Employees are issued a half an attendance point if they miss less than two hours of work and a full point if more than two hours are missed. Once employees reach 12 points they are issued a warning and if they accumulate two more points they are discharged.

From June 6 through November 30, 2016, claimant accumulated a total of 17 attendance points. (Exhibit 2). On September 22, 2016, after receiving 15 attendance points, claimant was issued a written warning advising him that if he incurred two more points he might be terminated. (Exhibit 3). Following this warning claimant was absent on November 29 and 30. The decision was made to terminate claimant effective December 9, 2016.

Matlick noted that if an absence is due to illness or injury it is coded as such when the individual calls in to the attendance hotline. Matlick testified that claimant's absences in November did not indicate he was sick or injured, but that he reported he was going to be gone for personal reasons. Matlick was not certain how many, if any, absences were due to claimant being sick or injured. Matlick testified at least two other absences were reported for personal reasons.

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.

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(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. Here, the employer has shown that at least four, if not more, of claimant’s 17 absences in a six-month period were due to personal reasons, rather than illness or injury. This includes claimant’s most recent absence that led to his termination. Claimant was issued a warning about his attendance on September 22, 2016 and advised that if he accumulated two more points he would be discharged from employment. 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 January 23, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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