

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RYAN M BISCHOFF**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 16A-UI-08155-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/26/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on August 29, 2016. The claimant Ryan Bischoff participated and was represented by attorney Joanie Grife. The employer Hy-Vee Inc. participated through hearing representative Sabrina Bentler and witnesses David Perkins and Michelle Millang. Employer's Exhibits 1 through 5 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 service worker from January 10, 2014, until this employment ended on June 28, 2016, when he was discharged.

The employer has a policy in place which requires employees to come to work at their scheduled times. Employees must notify a supervisor as early as possible, prior to the start of their shift, if they cannot be to work at the scheduled time. (Exhibit 3). Claimant was aware of this policy.

Throughout his employment claimant received several warnings regarding his attendance. Claimant's most recent warning was issued on June 14, 2016. (Exhibit 1). In the two weeks leading up to the written warning claimant was absent from work four times. Two absences were due to illness, one was due to claimant oversleeping, and the other involved a situation where claimant's father was hospitalized. The warning notes, since October 2015, claimant had been absent six days for family emergencies alone. The warning advised claimant if he was absent again he may be terminated. Claimant was absent from work on June 23, 2016 because

his car would not start. On June 28, 2016, claimant came in to work at his scheduled time, but shortly thereafter told Supervisor Brad VanHelton he was going home because he was tired. Claimant had difficulty sleeping prior to his shift due to noisy neighbors. Following this absence, the decision was made to terminate claimant's employment.

### 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. While claimant's absences relating to illness, and some of his family emergencies would likely be considered excused, in the 30 days prior to his termination he had at least three unexcused absences. Two of these absences came after claimant was specifically warned that further attendance issues may lead to termination. 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 July 18, 2016, (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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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