

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY M KOPPES

Claimant

C R PHARMACY SERVICE INC

Employer

APPEAL 17A-UI-00897-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/16

Claimant: Appellant (1)

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 January 18, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 24, 2017. Claimant participated with her spouse Danny Koppes, who also represented her. Employer participated through human resources business partner Lori Siebenmann, pharmacist Kim Van Schepen and chief human resource officer Angie Hoover. Employer's Exhibits A through E were received.

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 as a full-time certified pharmacy technician from March 2001, through December 28, 2016. Claimant fell and injured her ribs in a fall on December 10, 2016, while on vacation. She was last tardy in reporting to work on December 28, 2016, without noting a reason. (Employer's Exhibit A-4) At the hearing, she claimed it was due to medication side-effects but did not notify Van Schepen verbally or in writing. She also arrived to work tardy on December 19, 22, 23 and 27, 2016, without noting a reason on the electronic time-keeping system as had been requested. (Employer's Exhibit A-4) The employer only counted the check-marked tardiness dates against her and gave her some leeway after a period of punctuality. (Employer's Exhibit A) She generally told Van Schepen she was late to work because she "could not get going" but did not mention a migraine headache. The employer was concerned about claimant's tardiness because her med-pack duties were not completed soon enough for a pharmacist check and on-time delivery.

Van Schepen and Siebenmann gave her a non-disciplinary coaching on June 8, 2016, and allowed her an informal seven-minute grace period even though other employees did not receive such an accommodation. They also instructed her to write a comment in the electronic time-keeping system about reason for tardiness. Claimant first told the employer about migraine headaches after she called off the day after the Memorial Day holiday so it affected her

holiday pay. They discussed and explained scheduled and unscheduled absences, and tardiness procedures and consequences. They also explained and offered Family and Medical Leave Act (FMLA) leave paperwork. Claimant declined without giving a reason but “just kind of shrugged it off.” Although FMLA time off would be unpaid if claimant had no paid time off (PTO) remaining it would have allowed job protection and alerted the employer to frequency and accommodation needs. Claimant did not provide medical documentation to the employer or request an accommodation other than what the employer had offered.

On June 20, 2016, Van Schepen and Siebenmann issued claimant a verbal warning for clocking in after the seven-minute grace period. (Employer’s Exhibit B) On June 30, 2016, Van Schepen and Siebenmann issued claimant a written warning for arriving after the grace period. (Employer’s Exhibit C) Van Schepen and Siebenmann issued a written warning and two-day suspension on July 19, 2016, because of tardiness beyond the grace period without giving a reason on July 7 and 14, 2016. (Employer’s Exhibit D) Van Schepen did not allow claimant to excuse tardiness by making up the time at the end of the day but did allow her to make up hours if she missed all or part of a shift due to needing to sleep off a migraine for a couple of hours. This policy was also available to other employees. No discipline was applied for missing partial or whole shifts due to a reported migraine.

Van Schepen and Siebenmann granted claimant a change in arrival time to 9:15 a.m. without a seven-minute grace period beginning November 10, 2016. Claimant agreed that if the schedule were changed she would continue to report about 9:05 a.m. so she would be on time by 9:15 a.m.

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:

Causes for disqualification.

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.

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 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. Claimant argues that Van Schepen allowed her to make up tardiness time. This is not accurate or credible. Van Schepen allowed her to make up time missed when she had to sleep off a migraine but did not excuse tardiness beyond the grace period or altered start time as claimant often gave no reason related to migraines and several minutes would not make a difference to a migraine that a couple of hours would. Further claimant admitted to Van Schepen that the reasons for the tardiness were generally that she “could not get going” in the morning. Finally, the claimant did not establish a medical reason for the tardiness by her failure to provide medical documentation or completion of offered FMLA application. Thus, the employer has established that the claimant was warned that further improperly reported and/or unexcused absences could result in termination of employment and the final absence was not properly reported or excused. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The January 18, 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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs