

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DANIELLE N PATRICK**  
Claimant

**PRIMARY HEALTH CARE INC**  
Employer

**APPEAL 18A-UI-07129-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/03/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 21, 2018, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for excessive unexcused absenteeism and tardiness. The parties were properly notified about the hearing. A telephone hearing was held on July 26, 2018. Claimant participated and testified. Employer participated through Billing Manager Cathy Pinegar and Human Resource Specialist Amanda Wagoner. Employer's Exhibit 1 was 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 began working for employer on August 15, 2012. Claimant last worked as a full-time billing representative. Claimant was separated from employment on June 5, 2018, when she was discharged.

The employer has an attendance policy in place which states that employees cannot exceed more than six unplanned absences within a rolling six month period before disciplinary action, up to and including termination, is taken. Claimant was aware of this policy.

On January 12, 2018, claimant received a verbal warning. (Exhibit 1, Document 5). The warning states claimant was absent four days and tardy six days between December 4, 2017 and January 11, 2018. On February 19, 2018, claimant was given a written warning for her attendance. (Exhibit 1, Document 4). According to that warning claimant was tardy 20 times and absence once between January 12 and February 16, 2018. On April 10, 2018 claimant was given a final written warning after she was late ten times and absent twice between February 20 and April 9. (Exhibit 1, Document 3). Claimant was advised that further attendance violations would result in termination. On April 23, 2018, Pinegar met with claimant once more, after she

was again late, to clarify that any additional attendance violations would result in her termination from employment.

Claimant testified most of her full day absences were because she or her child was sick, though she acknowledged a few were due to issues with childcare. Claimant further testified that she was often late to work because she struggles with anxiety and depression. The employer's records show, for a majority of claimant's tardies, she did not call in to report she would be late. On May 15, 2018, claimant missed work because her child was sick. (Exhibit 1, Document 2). The final absence occurred on June 1, 2018. Claimant left work early because her son was experiencing some pain in his mouth and needed to see a dentist. (Exhibit 1, Document 1). Claimant testified her son was with her mother, but she was having difficulty with him because of the pain and her husband was unable to leave work. Claimant was able to get her son in to see the dentist something between 12:30 and 1:00 p.m. Her son ended up having to have two teeth pulled, but the procedure was completed within in an hour. Claimant did not contact the employer further or attempt to return to work that day. The decision was made to discharge claimant from employment for violation of the attendance policy. Claimant testified she did not attempt to return to work because she did not know this absence would lead to her being terminated.

#### **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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). 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, none of claimant's absences related to lack of childcare, or her unreported tardies are excused. The employer has established that the claimant was warned that further absences could result in termination of employment, despite claimant's contention that she did not think her final absence would result in termination. While it is understandable that claimant would want to remain with her child the remainder of the day after his dentist appointment, it appears

other childcare, claimant's mother, was available. Thus, 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 June 21, 2018, (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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs