

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**KATHERINE C ALMAN**  
Claimant

**APPEAL 15A-UI-11494-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 09/13/15  
Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 12, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 29, 2015. Claimant participated. Employer participated through light-duty supervisor Tonya Mesner and warehouse manager Bill Brauer. Employer's Exhibit One was admitted into evidence over claimant's objection. Claimant objected because some of the documents are false.

**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 light-duty order filler from March 13, 2011 and was separated from employment on September 17, 2015; when she was discharged.

The employer has an attendance policy which applies occurrence values to attendance infractions, including absences and tardies, regardless of reason for the infraction (Employer's Exhibit One). The policy also provides that an employee will be warned as occurrences are accumulated (Employer's Exhibit One). Employees are allowed to call-in to the employer up to one hour after the start of their shift. Claimant was made aware of the employer's policy at the time of hire (Employer's Exhibit One).

The final incident occurred when claimant was absent from her shift on September 17, 2015. Claimant was tardy due to mental health stresses (Employer's Exhibit One). Claimant contacted the employer approximately two hours after the start of her shift. Claimant also had her therapist fax the employer a note covering her absence on September 17, 2015 (Employer's Exhibit One). Claimant was also tardy around September 14, 2015 (Employer's Exhibit One).

Claimant was last warned on August 19, 2015 that she faced possible termination from employment further incidents of unexcused absenteeism (Employer's Exhibit One). Ms. Mesner also had a verbal conversation with claimant regarding her tardy around September 15, 2015. Ms. Mesner told claimant if she had any further occurrences, she would be discharged. Claimant testified most of her attendance infractions were due to her mental health stresses.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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(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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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 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, supra*.

An employer’s attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. On September 17, 2015, it is undisputed that claimant did not follow the employer’s call-in procedure. Claimant called approximately three hours after her shift had started. The employer considers this a no-call/no-show under its policy (Employer’s Exhibit One). However, even though the employer had already considered claimant to be a no-call/no-show by the time she called on September 17, 2015, it is clear from the documentation provided by her therapist to the employer that the delay in calling was reasonable. Claimant was suffering from mental health stress, and although her absence was not reported within one hour after her shift started, she did report and provide a note from her therapist on the date of her shift that explained why she was absent. Therefore, claimant’s final absence was properly reported and due to an illness or other reasonable grounds.

Because claimant’s last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The October 12, 2015 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

---

Jeremy Peterson  
Administrative Law Judge

---

Decision Dated and Mailed

jp/can