

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RYAN BURRAGE

Claimant

APPEAL 21A-UI-17030-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEMIS COMPANY INC

Employer

OC: 04/25/21

Claimant: Appellant (2)

Iowa Code §96.5(2)a-Discharge/Misconduct

Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On August 3, 2021, the claimant/appellant filed an appeal from the July 30, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant being discharged for excessive unexcused absenteeism. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2021. Claimant participated at the hearing. Employer did not register a number to participate in the hearing prior to the hearing and therefore did not participate in the hearing.

ISSUE:

Was the separation a discharge for job-related misconduct that disqualifies claimant from unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 8, 2018. Claimant last worked as a full-time Rewind Machine Operator. Claimant was separated from employment on April 20, 2021, when the employer notified him that he was terminated.

The employer has an attendance policy that assigns a point for each time an employee calls into work and cannot work their shift. If an employee is absent or is tardy they receive 1 point for each occurrence. If an employee accumulates 5 points they receive a verbal warning. At 6 points the employee receives a written warning. At 7 points an employee is terminated. The employer has an automated system employees call into notifying the employer of their absence.

Claimant was absent from work in July 2020. Claimant called into work and notified the employer he would not be at work because he had bursitis of his knee. In October 2020 claimant called into work and informed them he would not be at work because he has bursitis of his knee. Both of these absences were covered under FMLA.

On December 6, 2020, the claimant called into work and notified the employer through their automated system he would not be at work because he was ill. Claimant was notified in December that he had accumulated 6 points and was issued a written warning. Claimant was put on probation for his absenteeism. Claimant was told that his probation would end when his points total fell below 6 points. The employer had a policy that the points were accumulated on a rolling year format. A point would fall off an employee's record after a year had expired since accumulating the point. In February 2021, claimant had points drop off his record.

On April 19, 2021, claimant called into work and informed them that he would not be at his shift because it was his child's birthday. On April 20, 2021, the employer notified claimant that he was terminated for violating their attendance policy.

Claimant acknowledges that he received the employer's attendance policy on January 8, 2018.

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.

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.

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). 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.

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. 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).

An employer's no-fault absenteeism policy or point system 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 Iowa Employment Security Law because it is not volitional. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. All but one of claimant's absences was due to illness. One unexcused absence is not disqualifying since it does not meet the excessiveness standard. The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Accordingly, benefits are allowed.

DECISION:

The July 30, 2021, (reference 01) unemployment insurance decision is REVERSED. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style. The "C" is large and loops around the "arly". The "Smith" is written in a more standard cursive. There is a small horizontal line under the "y" in "Carly".

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 29, 2021
Decision Dated and Mailed

cs/mh