

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**WENDY D CASALI**  
Claimant

**SAC & FOX TRIBE**  
Employer

**APPEAL 17A-UI-05845-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/07/17  
Claimant: Appellant (5)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 31, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on June 21, 2017. The claimant participated and testified. The employer participated through Human Resource Director Lucie Roberts and Laundry Manager Dylan Wanatee. Employer's Exhibits 1 through 10 and claimant's Exhibit A were received into evidence.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a laundry worker from August 3, 2016, until this employment ended on May 11, 2017, when she was discharged.

The employer has a points-based attendance policy in place. (Exhibit 3). The policy allows employees to accumulate up to 12 attendance points within a rolling 12 month period before receiving any disciplinary action. Employees are assessed four points for a no-call/no-show, one point for an absence, and a half point for a tardy, early out, or missed punch. Claimant received a copy of this policy upon her hire. (Exhibit 1).

Over the course of claimant's employment she requested to leave work early on five occasions. Claimant could not specifically recall why she requested to leave early during these days, but thought some of them might have been because she was not feeling well and others were because everyone was leaving early. Claimant also accumulated points for ten absences during this time, seven of which were due to illness and the remainder of which due to

personal/family issues. (Exhibit 5). Claimant testified she believed at least some of the absences attributed to personal/family issues might have been due to illness, but could not remember for certain and was not sure why they would not be coded as such in the employer's system. Claimant was issued warnings for her attendance on March 21 and 25, 2017. (Exhibits 7 and 9). Both warnings advised claimant that further attendance violations may lead to termination.

Claimant was absent April 21 through 25. Claimant's absences these days were due to illness and she called in to properly report each absence. Claimant was also absent on April 28 and 29. Claimant initially testified she called her immediate supervisor to report she would be absent on April 28 and was told she needed to call the time and attendance department. According to Wanatee, who spoke with claimant's supervisor, she had no record or recollection of claimant calling in on April 28. Roberts testified each department has a specific call in number and there would never be a circumstance where an employee would be told to call time and attendance to report an absence. Roberts further testified claimant's supervisor was not working on April 28 and claimant did not have her personal cell phone number. Claimant then testified it might have been April 27 when she called her supervisor, though claimant was not scheduled to work that day. According to claimant she did call time and attendance as instructed on April 28, but no one answered her call and she did not leave a message on their voicemail system. Claimant further testified she did not call anyone to report her absence on April 29, because it was a Saturday and she knew no one from time and attendance would be there to answer her call. Claimant had no explanation as to why she did leave a message either day or call someone in her department for direction on how to proceed. Claimant was placed on disciplinary leave on April 30, 2017 and was subsequently terminated under the attendance policy. (Exhibits 2, 4, and 6).

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit but was discharged from employment due to job-related misconduct.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

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). 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. Claimant was absent from work without proper notice on April 28 and 29, 2017. Approximately one month prior to this, claimant received two warnings regarding her attendance. At least three of claimant’s previous absences were due to personal or family issues and are therefore not excused. The employer has established claimant was warned that further unexcused absences could result in termination of employment. The final absence was not properly reported and therefore, not excused. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The May 31, 2017, (reference 01) unemployment insurance decision is modified with no change in effect. Claimant did not voluntarily quit but 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