

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDY B REUTER
Claimant

AADG INC
Employer

APPEAL 16A-UI-06888-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/22/16
Claimant: Appellant (2)

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 June 10, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for repeated tardiness after being warned. The parties were properly notified of the hearing. A telephone hearing was held on July 8, 2016. The claimant, Brendy B. Reuter, participated. The employer, AADG, Inc., did not register a telephone number at which to be reached and did not participate in the hearing.

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 coordinator from November 6, 2005, until this employment ended on May 26, 2016, when she was discharged for violating the attendance policy.

Claimant's final absence occurred when she was late on May 25, 2016. Claimant was scheduled to work at 8:00 a.m.; she arrived at 9:00 a.m. Claimant was late because she overslept and could not find her keys. Claimant had been suspended one month prior, due to an absence. Claimant testified that she talked to her lead and reported that she needed to use "pre-planned" leave. Claimant gave the appropriate amount of notice and the lead gave her permission to be gone.

Claimant was aware of the employer's attendance policy and she described it as a progressive policy. Claimant believes the pre-planned absence, for which she received the suspension, should not have counted against her. Therefore, claimant believes her final late arrival should have resulted in a suspension, not a discharge.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant's final absence – her late arrival on May 25 – was an unexcused absence. However, one unexcused absence without more is not disqualifying since it does not meet the excessiveness standard. Claimant's most recent absence prior to May 25 was an absence for which claimant believed she received approval. The employer did not participate to refute claimant's testimony or provide any evidence that claimant's absence was not properly excused. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The June 10, 2016, (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.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs