

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE N EDWARDS
Claimant

5 STAR CALL CENTER
Employer

APPEAL 17A-UI-08882-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/11/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 25, 2017, (reference 03) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 19, 2017. Claimant participated. Employer participated through customer service manager Angela Chapman and human resource manager Amy Patterson.

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 began working for employer on July 12, 2017. Claimant last worked as a full-time customer service representative. Claimant was separated from employment on August 3, 2017, when she resigned in lieu of termination.

Employer has an attendance policy stating that employees can accrue 12 points before being terminated. Employees are required to report absences to employer prior to the beginning of their shift. Claimant was aware of the policy.

On July 18, 2017, claimant was absent due to a sick child and accrued one point.

On July 19, 2017, claimant was late for work and accrued one-quarter of a point. Claimant signed a coaching document the same day.

On July 20, 2017, claimant was late for work and accrued three-quarters of a point. Claimant signed a coaching document the same day.

On July 21, 2017, claimant was late for work and accrued one-quarter of a point. Claimant signed a coaching document the same day.

On July 24, 2017, claimant had a no-call/no-show absence and accrued four points. Claimant was also absent on July 25, 2017, and accrued one point.

Claimant received a written warning on July 26, 2017, but left early that day and accrued one-quarter of a point for doing so.

On July 27, 2017, claimant was late and accrued one-half of a point.

On Monday, July 31, 2017, human resource manager Amy Patterson met with claimant. Claimant explained she was having mental health problems. Claimant explained she had not been taking her medication for some time and was having difficulties. When questioned, claimant explained she had been harming herself. Claimant suggested she needed to admit herself to the hospital. Patterson stated that if she chose to do that, she would not accrue further attendance points. Patterson suggested they call the police to take her to the hospital. Claimant did not want to do that, so Patterson called claimant's family members. Claimant's family members came to the workplace to pick claimant up and claimant did not work that day.

Claimant attended work on August 1, 2017. Claimant contacted Patterson and stated she obtained medication for her condition and asked if she was eligible for leave under the Family and Medical Leave Act (FMLA). Patterson informed claimant she was not eligible for FMLA because she had only been working for employer for three weeks.

Claimant had a no-call/no-show absence the next day. Claimant was not feeling well and did not report her absence because she was having issues with her phone.

Claimant spoke with Patterson on the phone the next day. Patterson explained to claimant that she exceeded 12 attendance points and would be terminated. Claimant chose to resign instead so she would be eligible for rehire.

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.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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).

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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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 due to properly reported illness are excused, 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. 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). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

In this case, claimant had at least three unexcused absences within three weeks of employment, and the last absence was unexcused. Claimant's absence due to lack of child care was not excused, and claimant's two no-call/no-show absences were not excused as they were not properly reported. Claimant had many other absences, which can be attributed to the mental health issues she was experiencing at the time and are considered excused for purposes of unemployment law. However, three unexcused absences within three weeks is considered excessive absenteeism. An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and 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 August 25, 2017, (reference 03) decision is affirmed. The 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.

Christine A. Louis
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Decision Dated and Mailed

cal/rvs