

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLISSA J HANSEN
Claimant

APAC CUSTOMER SERVICES INC
Employer

APPEAL 15A-UI-04207-KC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/08/15
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 27, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 13, 2015. The claimant participated. The employer did not participate.

ISSUE:

Was the claimant discharged for work-related, disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a customer service representative beginning August 18, 2014, and was separated from employment on March 2, 2015, when she was told her employment was terminated.

The claimant understood that the employer expected employees to call their supervisor before the shift started if they were going to be absent due to medical issues. She also understood that she would need medical documentation in support of her medically-related absences.

The claimant was absent from work due to pregnancy-related symptoms including nausea and vomiting from February 20, 2015 through March 2, 2015. The claimant called her employer from the emergency room on February 20, 2015 to report that she could not work due to her symptoms. She received a physician's note excusing her from work for February 20 and February 21, 2015; two dates that she was scheduled to work. The claimant customarily worked every day of the week except Wednesdays and Sundays. She spoke with her supervisor Sandra Long on February 20, 2015.

On Monday, February 23, 2015, the claimant was examined by her primary physician, as directed by the emergency physician. The claimant received notes excusing her work absences from her primary physician for each day of work that she missed during the period of

February 20, 2015 through March 2, 2015. The claimant called her supervisor every morning before her scheduled shift to report her medically-based absence. She also brought in the physician notes to her supervisor every two to three scheduled work-days. During one telephone call, supervisor Long indicated that the claimant might exceed the permitted points for absences but did not indicate that her job was in jeopardy.

The claimant delivered her last medical note from her physician excusing her absence on March 2, 2015. She did not work that day. Her supervisor called her in the afternoon and advised her that because she was over the points permitted to continue working, under the employer's point system regarding absences, her employment was terminated that day. Long advised the claimant not to return to work.

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(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 employer did not participate in the hearing or provide documentary evidence in support of its position.

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.

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. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because her absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. 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.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because her 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. Benefits are allowed.

DECISION:

The March 27, 2015, (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. The benefits withheld based upon this separation shall be paid to claimant.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs