IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KYLE A BLOMMERS Claimant **TARGET CORPORATION** Employer	**APPEAL 15A-UI-10681-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/30/15** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 21, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2015. Claimant participated. Employer participated through human resource business partner Andrea Nelson. Employer Exhibit One was admitted into evidence with no objection. Employer Exhibit Two was admitted into evidence with no objection.

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 warehouse worker for the outbound department from July 8, 2014, and was separated from employment on August 31, 2015, when he was discharged.

The employer has a call-in line if an employee is going to miss their shift they need to call in at least thirty minutes prior to their shift; however, Ms. Nelson testified claimant was allowed to call in within two hours after his shift started to avoid a no-call/no-show. Employer Exhibits One and Two. This policy is in the team member handbook that is given to employees at the time of hire. Claimant received a copy of the handbook. Employees are also reviewed on their reliability. Employer Exhibit One. If an employee has a no-call/no-show, it results in corrective action being issued to the employee. The employer defines a no-call/no-show as "[n]ot calling or showing up for work within two hours of your scheduled start time." Employer Exhibit Two. A corrective action is a written warning. The first corrective action is called a counseling, the second corrective action is called a final warning, and the third corrective action results in discharge from employment. This is also in the team member handbook.

The final incident occurred when claimant was absent from work on August 30, 2015. Claimant's normal shift is from 6:00 a.m. to 6:00 p.m. On August 30, 2015 at approximately 2:00 a.m., claimant had to drive his mother to the hospital because she was having heart

issues. Claimant did not call the call-in line until 9:00 a.m. on August 30, 2015. Claimant left a message that his mother was having heart issues, he would not be at work, and he would explain more on August 31, 2015 when he came to work. On August 31, 2015, claimant arrived at work and spoke with his supervisor about what happened on August 30, 2015. The employer told claimant they would discuss the situation and let him know. Claimant did not speak to anyone from human resources about what happened. The employer discharged claimant for being a no-call/no-show on August 30, 2015.

Claimant was last warned on May 18, 2015, when he received a corrective action for unsatisfactory work performance. Employer Exhibit Two. This was a final warning. Employer Exhibit Two. Claimant was put on notice his job was in jeopardy. Employer Exhibit Two. Claimant also received a final warning on May 18, 2015 for have multiple corrective actions. On March 16, 2015, claimant received a corrective action for unsatisfactory work performance. Employer Exhibit Two. This was a counseling. Employer Exhibit Two. On December 27, 2014, claimant received a corrective action for being a no-call/no-show on December 21, 2014. Employer Exhibit Two. This was a counseling. Employer Exhibit Two.

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. Benefits are allowed.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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 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. 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, supra.*

The employer requires employees to call the call-in line at least thirty minutes prior to their shift if they are going to miss work. Employer Exhibit One. However, the employer did notify claimant that he did have until two hours after his start time to use the call-in line to avoid a no-call/no-show. Employer Exhibit Two. Claimant had been warned about attendance on prior occasions. Employer Exhibit Two. On May 18, 2015, the employer put claimant on notice his job was in jeopardy with two separate final corrective action notices. Employer Exhibit Two.

On August 30, 2015, claimant was scheduled to work at 6:00 a.m. At approximately 2:00 a.m. on August 30, 2015, claimant had to drive his mother to the hospital. It is undisputed that claimant did not call the call-in line until after 8:00 a.m. Claimant did call the call-in line and left a message that he was at the hospital with his mother, he would not be at work, and he would explain more on August 31, 2015 when he came to work. On August 31, 2015, claimant explained to his supervisor what happened on August 30, 2015. Later that day, the employer discharged claimant.

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.

The administrative law judge finds that driving your mother to the hospital because she is having heart issues falls in the category of "other reasonable grounds" and is not considered misconduct. Furthermore, given the circumstances on August 30, 2015, claimant did properly report the reason he was not at work on August 30, 2015. Claimant contacted the employer approximately three hours after the start of his shift and informed it why he was going to be absent. It is not persuasive that this would be misconduct because it was an hour outside of the employer's two-hour call-in window. Given the circumstances on August 30, 2015 and that claimant still called in even though he was at the hospital, claimant reasonably reported the absence. Furthermore, claimant explained to his supervisor the very next day the reason for the absence. Because claimant's 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. 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. Accordingly, benefits are allowed.

DECISION:

The September 21, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

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