

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALISA M MITCHELL
Claimant

APPEAL 15A-UI-13963-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 11/22/15
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Alisa Mitchell (claimant) filed an appeal from the December 11, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination Tyson Fresh Meats, Inc. (employer) discharged her for excessive unexcused absenteeism after being warned. The parties were properly notified about the hearing. A telephone hearing was held on January 26, 2016. The claimant participated on her own behalf. The employer participated through Employment Manager Kris Rossiter.

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: The claimant was employed full time as a production laborer beginning on October 21, 2008, and was separated from employment on October 28, 2015, when she was discharged. The employer has an attendance policy that states an employee is subject to discharge after acquiring 14 attendance points in a 12-month rolling calendar. Most of an employee's absences will result in attendance points, including properly reported illnesses or injuries and those which may have been for reasonable grounds.

The claimant's last absence occurred on October 26, 2015. She was scheduled to start work at 6:00 a.m., but did not report to work until 12:00 p.m. The claimant had notified Supervisor Jesus Torres two weeks before her absence that she was going to be late due to a court appearance. He told her that was fine and to report to work when she could. The claimant did not follow the employer's process of requesting time off by completing a written form and submitting it to her supervisor, Julianne Fernandez.

The claimant had 17 other absences in the previous 12-month rolling calendar. Of those 17, 16 were related to illness and the claimant notified the employer before the start of her shift or obtained approval from her supervisor before leaving work. The claimant was late to work on February 10, 2015 due to severe weather. She contacted her supervisor immediately after

learning she was going to be late. Most other employees were late that day as well, but everyone received half an attendance point.

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.

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*.

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.

The majority of the claimant's absences were related to illness and properly reported. Therefore, they are considered to be excused absences. The claimant had two absences unrelated to illness. Typically, transportation is not considered an excused absence; however, in this case, the claimant's absence on February 10, 2015 was not due to a lack of transportation, but poor road conditions due to severe weather. The claimant's absence is excused as other reasonable grounds as it was an unavoidable situation as evidenced by many other employees also being late that same day. The claimant's final absence was likely not excused as she did not follow the employer's procedure for requesting time off and it was not properly reported.

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. Benefits are allowed.

DECISION:

The December 11, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/css