

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA A BLANCHARD
Claimant

APPEAL 17A-UI-00257-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONVERGYS CORPORATION
Employer

OC: 12/11/16
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 January 4, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on January 30 and 31, 2017. The claimant, Angela A. Blanchard, participated. The employer, Convergys Corporation, participated through Tara Schon, Team Leader; Matt Determan, Senior Operations Manager; and Staci Albert, Human Resources. Claimant's Exhibits A through D and Employer's Exhibits 1 through 5 was received and admitted into the record without 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, most recently as a customer service representative, from August 12, 2008 until December 15, 2016, when she was discharged for absenteeism. Claimant's final absence occurred on December 15. She was scheduled to work 8:30 a.m. to 2:30 p.m. Claimant did not report to work that day. She called in around 1:00 p.m. and reported that she was not feeling well and had slept in, which prevented her from calling earlier. Claimant testified that she had pneumonia and called in as soon as she woke up and was able to do so.

On December 14, claimant spoke with Schon and asked her if she could leave and requested a leave of absence. Schon referred claimant to human resources. Schon denies knowing that claimant was going to leave for the day, though claimant testified she told Schon she was not feeling well and needed to leave work. Claimant had extensive absences prior to December 14, including full-day absences, late arrivals, and early departures. Claimant was aware her job was in jeopardy for attendance reasons.

The employer provided testimony on the call-in procedure for employees who are going to miss work. Schon testified that employees are expected to call both the IBR Line, an 800 number leading to an automated system, and the MOD Line, a number that will reach a manager on duty so the employee can report a reason for the absence. Both of these calls should be made one hour prior to the shift starting. According to the employer, claimant routinely failed to follow the procedure and would only call the IBR Line. None of the warnings that the employer submitted indicate claimant was disciplined for improperly reporting her absences.

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.

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).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, 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. 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.

Here, claimant testified that her final absence was due to pneumonia. The administrative law judge believes that this illness prevented claimant from calling in one hour prior to her scheduled start time. Claimant reported this absence as soon as she woke up and was able to contact the employer. Since 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, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The January 4, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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