

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARMALYN M VAN LANINGHAM
Claimant

APPEAL 15A-UI-13894-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**OC: 11/29/15
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 17, 2015 (reference 01) unemployment insurance decision that denied benefits because of discharge from work for excessive unexcused absenteeism after being warned. After due notice was issued, a telephone hearing was held on January 8, 2016. Claimant Karmalyn M. Van Laningham participated and was represented by attorney James Peters. The employer, Menard Inc., participated through store counsel Gary Roehm and general manager Brian Sampson. Claimant's Exhibits One and Two were admitted. Employer's Exhibits A, B, C, and D were admitted.

ISSUE:

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 was employed full time as a hardware/garden center team member from May 2, 2007 and was separated from employment on November 27, 2015; when she was terminated.

The employer maintains a disciplinary attendance policy based on points. Different instances of lateness/absence are awarded different point values, and an employee is terminated once he or she receives ten points (Employer's Exhibit A). The employer's attendance policy defines a "No-Call Absence" as the following: "Punching in sixty (60) minutes or more after a Team Member's scheduled start time, or missing an entire scheduled shift without prior approval when the Team Member fails to notify his/her manager of the absence prior to the beginning of his/her scheduled shift" (Employer's Exhibit A). The policy states that absences may be excused by the Unit Manager (Employer's Exhibit A). It indicates that a team member has three days to provide documentation to excuse an attendance issue (Employer's Exhibit A).

Claimant received five attendance points on November 13, 2015 because she had overslept and was 73 minutes late to work (Employer's Exhibit C). After being awarded those five points, she had six total attendance points.

Claimant was scheduled to work at 8:00 a.m. on November 27, 2015. She overslept that day and failed to report to work on time. Initially, she called in and spoke to Kendra, assistant hardware manager. Kendra told the claimant to get to work when she could. Claimant asked if she was going to be terminated and Kendra responded that she should just come to work. Later that morning, claimant called in and spoke to Sampson. She testified that she told him she was exhausted, her body was worn out, and her back was hurting. Sampson replied that she had gone over her points and she would be terminated. He told her that she could come in or be terminated over the telephone. Claimant's attendance disciplinary record for November 27, 2015, states she received five points for an "Absent No-Call/No-Show" (Employer's Exhibit B). This took her to 11 total attendance points and Sampson terminated her.

Later that day, claimant went to the doctor and was excused from working for one week by Kurt A. House, D.O. (Claimant's Exhibit Two). Dr. House signed the note on November 27, 2015 at 11:14 a.m. (Claimant's Exhibit Two). Claimant delivered the note to Human Resources that day and she was told that Sampson would not accept the note. Claimant testified that she had previously brought in a doctor's note after an unexcused absence to excuse the absence and remove the corresponding attendance points.

Sampson testified that he was aware that the claimant had health issues in the past. He knew she experienced anxiety and when the two spoke via telephone on November 27, she told him she was under a lot of stress.

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.

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). 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). An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant to be a credible witness. The administrative law judge finds claimant did notify Sampson that, in addition to oversleeping, she was experiencing back pain, stress, and exhaustion. Claimant brought in a doctor's note the day she was terminated to corroborate her self-reported health condition and to remove the five attendance points she had been assessed earlier that day, pursuant to the employer's policy. The employer refused to accept claimant's medical note. It is unclear why the employer refused to accept the note but the refusal runs contrary to the disciplinary attendance policy. If management wishes to hold employees to a written policy, it must enforce that policy fully and consistently, not selectively or unpredictably. Benefits are allowed.

DECISION:

The December 17, 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. Benefits withheld based upon this separation shall be paid to claimant.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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