

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JENNIFER A JEFFREY
Claimant

APPEAL NO. 19A-UI-03970-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEXTER LAUNDRY INC
Employer

OC: 04/07/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jennifer Jeffrey (claimant) appealed a representative's May 7, 2019, decision (reference 05) that concluded she was not eligible to receive unemployment insurance benefits after her separation from work with Dexter Laundry (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2019. The claimant participated personally. The employer participated by Katie Six, Senior Human Resources Administrator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 14, 2019, as a full-time production worker. She told the employer she needed to be absent on March 5, 2019, for a Iowa City, Iowa, doctor's appointment she scheduled six-months in advance. The employer agreed to hire her with that understanding. The claimant received the collective bargaining agreement at hire. The attendance policy was separate from the collective bargaining agreement.

The attendance policy stated that regular employees could be terminated for accumulating five attendance points in a rolling twelve-month period. Employees who had been employed less than ninety days were considered probationary. Probationary employees who demonstrated a pattern of absenteeism could be terminated.

The claimant properly reported all her absences. On January 23 and 31, 2019, she was absent due to the weather. The claimant's supervisor told her that those absences would be excused. Absences were excused on those days for all non-probationary workers. The employer did not excuse those absences. On February 18, 2019, the claimant was traveling to work in snow when her car went in a ditch. The employer did not excuse her absence. The employer did not excuse the March 5, 2019, absence for her doctor's appointment.

On March 7, 2019, the employer received a call at work from the school nurse. The call was forwarded to the claimant. The school nurse told the claimant to leave work and collect her child who had a fever of 102.7. The supervisor allowed the claimant to leave work. On March 25, 2019, the claimant properly reported her absence due to her own illness.

On April 9, 2019, the claimant reported her absence because her eleven year old son was sick with influenza. On April 12, 2019, the employer talked to the claimant about moving to third shift to avoid problems with absences. Later that day, the supervisor terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. 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 v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

The employer treated classes of employees disparately. It excused weather days for some and not for others. It treated absences as intentional and unexcused for the claimant and not for others. The claimant should be treated the same as the other employees for absences on January 23 and 31, 2019. Her absences are deemed excused for those days. Likewise, on February 18, 2019, the claimant's absence was not intentional. She did not intend to drive her car into a ditch in the snow.

At the time of hire, the employer told the claimant she could be absent on March 5, 2019, to attend a previously scheduled doctor's appointment. The absence which occurred on March 25, 2019, was due to a properly reported illness. The claimant's absences on March 5 and 25, 2019, do not amount to job misconduct because there were due to medical issues and properly reported.

This leaves two absences in three months that are not excused. Those absences were for sick children. The claimant was absent on March 7, 2019, because a school nurse told her to collect her sick child. She obtained permission from the employer and left work. On April 9, 2019, the claimant had a second absence for a sick child. Two absences in three months are not excessive.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. In this case, the employer has not established that the claimant was warned that further unexcused absences could result in termination of employment. An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's May 7, 2019, decision (reference 05) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs