

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE L SAHR
Claimant

APPEAL 17A-UI-05059-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIVERSIFIED SERVICES FOR INDUSTRY
Employer

**OC: 04/16/17
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Denise L. Sahr (claimant) filed an appeal from the May 4, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit work due to non-work related illness or injury. The parties were properly notified about the hearing. A telephone hearing was held on June 12, 2017. The claimant participated. The employer participated through Human Resources Generalist Nicole Taylor and was represented by Anna Marie Gonzalez from UC Advantage, Inc. Employer's Exhibit 1 was received.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was employed full-time as a General Cleaner beginning on March 21, 2016, and her last day worked or scheduled was December 13, 2016. The following day, the claimant began personal leave of absence to have a surgery. She was to have a follow-up with her doctor for the surgery on January 24, 2017.

On January 15, 2017, the claimant notified Area Operations Manager Rodney Backous that she was scheduled for knee surgery on January 27, 2017, which was unrelated to her first surgery. Backous stated he would need paperwork from her knee surgeon confirming the surgery and stating what date the claimant would be returned back to work. He stated this was needed to approve additional time off work. The claimant contacted the clinic and assumed it had sent the necessary documents to the employer.

On January 31, 2017, the claimant contacted the employer through Debbie Parsley asking for information about Short Term Disability (STD) payments. Parsley responded by telling the claimant to contact a third party for questions about STD payments and Human Resources

Generalist Nicole Taylor for questions about her leave of absence. Taylor then sent a follow-up email to the claimant stating she needed a note from the claimant's knee surgeon regarding the time off required so the leave could be approved. The claimant again contacted the clinic and assumed the required documents were sent to the employer.

On February 9, 2017, Taylor sent the claimant a letter. She stated the employer had not received any additional medical documentation and the claimant had not returned to work. The employer assumed the claimant voluntarily quit her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit her employment but was discharged due to job-related misconduct. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). If an employee does not report to work or notify the employer of its absence in violation of the employer's policy, he or she will be presumed to have abandoned the job and voluntarily quit. Iowa Admin. Code r. 871-24.25(4). Additionally, if an employee leaves employment without notice or reason and fails to return to work, it renders the separation job abandonment without good cause attributable to the employer. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the claimant did not abandon her job. The employer knew she was having surgery on January 27 and that was why she was absent. The claimant also did not miss three consecutive days of work as she was not on the schedule after December 13. The claimant did not express an intention or engage in an overt action to indicate that she was voluntarily leaving her employment. The claimant did not have the option of remaining employed after February 9, 2017. The employer discharged the claimant.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an

intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 the 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); 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 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 point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer grants its employees personal leave as a benefit to the employees. The employer communicated to the claimant that in order to approve her leave and maintain her employment status, she needed to submit documentation from her knee surgeon to be eligible for additional personal leave. The claimant did not comply with the employer's request. While she contacted her clinic, she did not follow-up to ensure the employer received the documentation. The claimant did not properly report her absences from January 24 through February 9, rendering them unexcused. The absences were also excessive. Benefits are denied.

DECISION:

The May 4, 2017, reference 01, unemployment insurance decision is modified with no change in effect. The claimant did not voluntarily quit her employment but was discharged due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn