

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA L ABDUL-MASIH
Claimant

WALMART INC
Employer

APPEAL 18A-UI-03907-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Debra L. Abdul-Masih (claimant) filed an appeal from the March 20, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination Walmart, Inc. (employer) discharged her for repeated tardiness after being warned. The parties were properly notified about the hearing. A hearing was held at 10:00 a.m. on May 30, 2018 in Davenport, Iowa. The claimant participated. The employer participated through Personnel Coordinator Margaret Neilson and Assistant Manager Karen Mueller. The Claimant's Exhibit A and the Employer's Exhibits 1 through 3 and 5 through 8 were admitted without objection. The Employer's Exhibit 4 was admitted over the claimant's objection based on relevance.

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 Sales Associate beginning on July 13, 2005, and was separated from employment on March 2, 2018, when she was discharged. The employer has an attendance policy that it updated in March 2016. The new policy required employees to contact an attendance line or report absence through a website prior to the start of shift. (Exhibit 6) The claimant received a document outlining attendance changes including an update that at nine occurrences, the employee is subject to termination and arriving ten or more minutes late will result in half an occurrence. (Exhibit 5)

The claimant's final absence occurred on February 27, 2018, when she was ten minutes late to work due to her Uber driver. The claimant was ten to 37 minutes tardy to work without supervisor approval a total of 18 times during the six-month period that began on September 2, 2017. (Exhibit A, Exhibit 3) She was late due to issues with ill family members, various personal reasons, and issues with Uber rides after her vehicle broke down on or about December 26, 2017. The claimant did not report her absences through the attendance line per the employer's policy. She was aware that at nine occurrences she would be subject to discharge and she checked her attendance occurrences two times a week.

During the same six-month timeframe, the claimant had an intermittent leave of absence to care for her father. Absences related to the care of her father that were properly reported to the third-party administrator did not count as occurrences.

On March 1, 2018, Assistant Manager Karen Mueller told the claimant she was discharged due to accumulating nine attendance occurrences. The claimant believed she had only eight and a half occurrences as she mistakenly believed one tardy had been covered under her intermittent leave of absence and she believed one occurrence would fall off the following day. The claimant got up and left the meeting without signing the exit interview. The following day, the claimant reported to work and Mueller notified her that she was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 claimant's 18 occurrences of tardiness were unexcused as they were related to issues of personal responsibility. The employer had a policy outlining when attendance occurrences would lead to discharge. The claimant was aware she was at the high end of attendance. Additionally, a reasonable employee understands there is a requirement to report to work when expected. The claimant's final absence was unexcused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The March 20, 2018, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment 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