

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KOKOU M YOVONOU**  
Claimant

**EXPORT PACKAGING**  
Employer

**APPEAL 16A-UI-05265-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/25/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Kokou M. Yovonou (claimant) filed an appeal from the May 2, 2016, (reference 03) unemployment insurance decision that denied benefits based upon the determination Export Packaging (employer) discharged him for excessive, unexcused absenteeism. The parties were properly notified about the hearing. A hearing was held in Davenport, Iowa at 9:00 a.m. on July 26, 2016. The claimant participated personally and through interpreter Craig Roalson. The employer participated through Employer Relations Manager Erin Hammond. Employer's Exhibit 1 was received.

**ISSUES:**

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 Machine Operator/Case Sealer beginning on November 9, 2015, and his last day worked was November 25, 2015. The claimant attended orientation when he was hired. During the orientation, the claimant received a copy of the employer's handbook which includes its attendance policy. The attendance policy states, in part, that any absences during the first 30 days of employment gave the employer cause to end the employment relationship.

On Monday, November 30, 2015, the claimant received a phone call from his brother who lives in Muscatine, Iowa stating that the claimant's sister-in-law was hospitalized. The claimant traveled from Moline, Illinois to Muscatine to help his brother care for his children during his wife's illness. The claimant contacted the employer to notify it that he would not be to work because of an emergency with his mother. He indicated he would be back to work the following Monday. The claimant did not call and report his absences on December 1, 2, or 3, 2015.

On December 4, 2015, the claimant spoke with a member of the Human Resources Department, Amy Maxwell. At that time, the claimant told Maxwell he would need

approximately three weeks off of work. Maxwell explained the employer likely could not keep his job open for that long and advised him to contact the employer each day he was absent.

On December 7, 2015, the claimant notified the employer he would not be at work as he was still visiting his sick mother. The following day he reported he was visiting his sick mother and would be back in a few weeks. On December 9, 2015, the claimant reported he would not be back to work for three weeks. On December 10, 2015, the decision was made to end the claimant's employment due to violations of the attendance policy during the first 30 days of employment.

## **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 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 provides, in relevant part:

Discharge for misconduct.

(1) Definition.

a. "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.

...

(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 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 the employee's own illness or other reasonable grounds for which the he or she 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 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. 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.

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 the employer's timeline of the claimant's absences to be more credible. The claimant stated at the beginning of his testimony that he did not remember specific dates related to his employment. However, the employer's witness reported the absences as recorded on the employer's notes for each employee which are kept as a normal course of business.

The claimant was employed for a total of 19 workdays. He was absent from work for eight workdays. The claimant's absences were excessive.

The next issue is whether the claimant's absences were excused. Iowa Employment Security Law considers unexcused absences to be those which are for the claimant's own illness or for other reasonable grounds. It does not consider issues of personal responsibility, such as a lack of childcare, as excused absences. The claimant missed work so he could assist his brother and sister-in-law with their children during his sister-in-law's illness. Generally a claimant's absence is not excused due to a lack of childcare for his or her own child; therefore, the claimant's absence due to a lack of childcare for his nieces and nephews is not excused. While the claimant may have made the appropriate decision for his family, his excessive, unexcused absenteeism is considered disqualifying misconduct under Iowa law. Accordingly, benefits must be denied.

**DECISION:**

The May 2, 2016, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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