

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMIE K LARSON**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 17A-UI-08285-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/16/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 2, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for repeated tardiness after being warned. The parties were properly notified of the hearing. A telephone hearing was held on August 31, 2017. The claimant, Jamie K. Larson, participated. The employer, Hy-Vee, Inc., participated through Courtney Hudelson, HR Manager; Kaylyn Johnson, Bakery Manager; and Kate Sitzman, Manager of Perishables; and Barbara Buss of Corporate Cost Control, Inc., represented the employer. Employer's Exhibits 1 through 8 were received and admitted into the record without objection.

**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: Claimant was employed full time, most recently as a bakery clerk, from March 15, 2013, until May 16, 2017, when she was discharged for punching in late to work. Claimant was scheduled to work at 8:00 a.m. on May 14, 2017. She arrived at 8:04 a.m. that day. Claimant did not call to let anyone know she would be late, and she did not provide a reason for arriving late to work. Claimant attributes her late arrival that day to working in a department other than the bakery.

Since February 27, 2017, claimant had been between one and six minutes late twelve times. She did not call in for any of these late arrivals, and she did not provide a reason for being late on any of these occasions. Additionally, claimant was over thirty minutes late on several occasions during this period of time. On April 23, claimant was one hour and forty-two minutes late. She called ten minutes prior to her shift's start time to report that she overslept. Claimant was forty minutes late on April 14, 2017. She called and reported that she woke up late. On March 27, claimant was forty-five minutes late. She called and reported that she was running late that morning.

The employer has a policy that notifies employees they must punch in no later than their actual start time. (Exhibit 8) An employee who is going to be late or absent is expected to call in at least one hour prior to her scheduled start time. Claimant had been warned on multiple prior occasions for her tardiness. On April 24, 2017, claimant received a corrective action for her late arrivals since February 27. The corrective action states that this is claimant's final warning. (Exhibit 2) It also states that an employee who arrives to work even one minute late is considered late.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld.

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(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.

Excessive absences are not considered misconduct unless unexcused. 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). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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) (emphasis added); 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.

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 Dep’t of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). When no excuse is given for an absence at the time of the absence and no reason is given in the record, an absence is deemed unexcused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 191 (Iowa 1984). See also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

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 has established that the claimant was warned that further improperly reported or unexcused absences could result in termination of employment and the final absence was not properly reported or excused. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The August 2, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. 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.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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