

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN M SHORT
Claimant

MARKETLINK INC
Employer

APPEAL 17A-UI-13345-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/26/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Dawn M. Short (claimant) filed an appeal from the December 14, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Marketlink, Inc. (employer) discharged her for excessive, unexcused absenteeism. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2018. The claimant participated. The employer participated through Regional Call Center Director Kim Passick. No exhibits were offered into the record.

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 Telephone Sales Representative beginning on August 2, 2016, and was separated from employment on November 3, 2017, when she was discharged. The employer has an attendance policy requiring employees to work 50 percent of all hours scheduled over a four-week period. The claimant was scheduled to work Monday through Friday from 11:30 a.m. to 8:00 p.m. and some Saturdays for a total of 160 hours during the four-week period.

The claimant was discharged for her absences during the period that ran from October 2, 2017 through October 29, 2017. The claimant worked two eight-hour days during that time period, October 3 and October 26, and missed all or most of the day every other day she was scheduled to work. She worked a total of 69.5 hours during the month and averaged 3.86 hours on the 18 days she worked. The claimant missed four full days of work. The claimant's absences were due to personal issues related to her parents in Arkansas. The claimant was aware of the employer's attendance policy, but every time someone from management sat down with her to discuss her hours, they were unable to pull up the report showing the number of hours she had actually worked.

The last two days of the relevant timeframe were a Saturday and Sunday and the claimant was on an approved leave of absence beginning, Saturday, October 28. If the eight hours of approved time off on Saturday, October 28, are deducted from the 160 scheduled hours during the four-week timeframe, the claimant was responsible for working a total of 152 scheduled hours. The claimant worked 45.7 percent of the 152 hours for which she was responsible. The claimant was discharged on November 3, 2017, for failing to meet the 50 percent attendance guideline.

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*. When there is an absence with no excuse given at the time of the absence and one is not furnished during the hearing, the absence is not excused. *Id.* at 191.

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 only worked 45.7 percent of the hours for which she was scheduled during a four-week period. The claimant's absences were excessive.

The issue becomes whether the claimant's absences were unexcused. The claimant missed the majority of her hours due to personal reasons related to her parents in another state which does not constitute excused absences. She may have missed some work due to illness but was unable to state when those absences occurred. Given the information in the record and provided to the employer, the claimant's absences were unexcused. The claimant's argument that she did not know her job was in jeopardy is not persuasive. She knew the employer's policy and was aware of what hours she did work each day. A reasonable person knows that reporting to work is necessary to maintain employment. The employer has met the burden of proof to establish that the claimant had excessive, unexcused absenteeism which is an intentional disregard of the duty owed to the employer. Accordingly, benefits are denied.

DECISION:

The December 14, 2017, 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