

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JULIE R SWANSON**  
Claimant

**APPEAL 16A-UI-09172-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMITY FELLOWSERVE IOWA INC – LP1**  
Employer

**OC: 07/31/16  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 19, 2016, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 9, 2016. Claimant participated. Employer participated through director Amy Hylton. Employer's Exhibit 1 was received.

**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 began working for employer on July 31, 2000. Claimant last worked as a full-time resident services director. Claimant was separated from employment on July 22, 2016, when she was terminated.

Employer has an attendance policy that requires employees to notify their supervisor as soon as possible if they will be absent from their shift.

Claimant began experiencing symptoms of a chronic medical condition and had numerous absences during June and July 2016. Employer was aware of claimant's medical condition and that it was causing claimant's absences. Oftentimes, claimant did not provide notice of her absence until well after her scheduled shift began. On July 1 and July 5, 2016, employer asked claimant to bring in a doctor's note excusing her absences. Employer did not give claimant a deadline by which the doctor's note was required. By July 12, 2016, employer notified claimant it was taking her off the schedule.

Claimant never felt well enough to return to work and did not bring in a doctor's note by July 22, 2016. On July 22, 2016, employer sent claimant a letter terminating her employment.

Employer never warned claimant that if she did not promptly report her absence each day or bring in a doctor's note she would be terminated.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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 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).

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.

The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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 due to properly reported illness are excused, 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*. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, *supra*. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

Inasmuch as employer had not previously warned claimant she could be terminated for the issue leading to the separation, it has not met the burden of proof to establish that claimant

acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

**DECISION:**

The August 19, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

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