

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NGUN T THANG

Claimant

APPEAL 21A-UI-02841-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER TRADING CORPORATION

Employer

OC: 11/01/20

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On January 10, 2021, the claimant, Ngun Thang, filed an appeal from the January 6, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Thursday, March 11, 2021. The claimant, Ngun Thang, participated. Hakka Chin / English interpreter Hannah (ID number 9901) provided interpretation services for the hearing. The employer, Alter Trading Corporation, participated through witnesses Scott Erickson, Regional HR Manager; and Nathan Shaull, Facility Manager; and was represented by employer representative Tim Speir. Employer's Exhibits 1, 2, 3, and 4 were received and admitted into the record without objection.

ISSUE:

Was claimant Ngun Thang discharged from employment due to 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 sorter, from July 29, 2019, until October 23, 2020, when he was notified that he was discharged.

Claimant last reported to work on Friday, October 16, 2020. He left work early that day because his six-year-old daughter was sick. Claimant informed his supervisor prior to leaving that he needed to leave work due to his ill child. Claimant explained that his wife had been in a severe car accident on October 11, and she was not able to care for their daughter.

Claimant called in on October 17, 2020, as he was not able to work due to caring for his daughter. Claimant was a no-call/no-show on October 18, 2020. He initially notified a coworker that he would be late that day, due to getting his daughter off to school and helping to care for his wife. However, he never made it to work that day.

Claimant was a no-call/no-show for work on October 20, 2020. He explained that he intended to call in but between helping his wife and caring for his daughter, he forgot to call the employer and report his absence.

Claimant was also a no-call/no-show for work on October 21, 2020. He called Erickson at 4:43 p.m. to explain that his family had been in a car accident previously, that he had to drive his wife to therapy appointments, and that he had totaled his car. Erickson reminded him that he needed to be calling in for every scheduled day that he could not make it to work.

Claimant had prior issues with absenteeism. On March 20, 2020, he received a Final Written Warning and Suspension for a no-call/no-show absence that occurred on March 16, 2020. Claimant served a three-day unpaid suspension after receiving this disciplinary notice. The notice informed him that future violations could lead to discharge from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant Ngun Thang was discharged from employment for 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 "[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. 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). 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. Claimant may have had compelling personal reasons to miss work in October 2020. However, he had no good explanation for failing to call and report his absences to the employer. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The January 6, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. 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.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 15, 2021
Decision Dated and Mailed

lj/scn