

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GREG J BOUCHER
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 17A-UI-01040-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/01/17
Claimant: Appellant (1)

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 January 19, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his discharged for excessive absenteeism and tardiness. The parties were properly notified of the hearing. A telephone hearing was held on February 17, 2017. The claimant participated and testified. The employer participated through Hearing Representative Dena Shelton and Associate Business Partner Andrea Rozell.

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 as a lab tech from March 18, 2013, until this employment ended on December 14, 2016, when he was discharged.

The employer has an attendance policy in place which allows employees up to ten occurrences in a rolling calendar year. When employees reach ten occurrences, or if they reach nine occurrences twice, in a rolling calendar year, they are subject to termination. Employees, including claimant, are given a copy of this policy up being hired and are reminded of the policy at each disciplinary step taken prior to termination. If employees are less than 15 minutes late to work or miss a punch they are issued a quarter of an occurrence point. Employees who are 15 to 89 minutes late are assessed a half of an occurrence point. Employees late by more than 90 minutes or who miss an entire day are assessed a full occurrence point. When employees reach seven occurrence points they receive coaching. At eight occurrence points employees are given a written warning and at nine points they are given a final warning.

In the months leading up to his termination claimant was issued several warnings regarding his attendance. Claimant was given written warnings about his attendance on August 18 and September 13, 2016. On October 14, 2016 claimant was given a final written warning and

advised that one more occurrence might lead to termination. On November 17, 2016, claimant was issued an additional half point for being tardy and was again warned about his attendance. On December 13, 2016, claimant was more than 90 minutes late to work and was issued a full point. This put claimant over the allowable number of occurrences and his employment was terminated. In the calendar year leading up to claimant's separation he was late to work 16 times. Claimant testified he had a new baby at home, who was very colicky, making it difficult to sleep and wake up on time. Claimant's tardy on December 13 was due to oversleeping.

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.

Iowa Code section 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.

871 IAC 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).

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. Claimant was late to work sixteen times, due to oversleeping, within the calendar year leading up to his termination. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. Claimant’s most recent warning came less than a month before his final tardy. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The January 19, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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