

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBEKAH M HUEBSCH

Claimant

APPEAL 20A-UI-01103-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 08/25/19

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 30, 2020 (reference 07) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 21, 2020, at 8:00 a.m. Claimant participated. Employer participated through Paula Schnell, Manager. Employer's Exhibits 1 – 4 were admitted.

ISSUE:

Whether claimant's separation was a discharge 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 as a part-time store employee from August 27, 2019 until her employment with Casey's Marketing Company ended on November 24, 2019. (Schnell Testimony) Claimant's schedule varied. (Schnell Testimony) Claimant's direct supervisor was Paula Schnell, Manager. (Schnell Testimony)

Employer has an attendance policy outlined in the employee handbook. (Schnell Testimony) The policy states that employees are required to call their immediate manager/supervisor as far in advance as possible to report an absence. (Exhibit 4) The policy further states that two no-call/no-show absences will be considered a voluntary resignation. (Exhibit 4) Claimant did not receive a copy of the handbook (Schnell Testimony); but was aware of the attendance policy (Claimant Testimony).

On October 25, 2019 and October 23, 2019, claimant was absent from work due to illness and notified employer prior to the beginning of her shifts. (Schnell Testimony; Claimant Testimony) On October 29, 2019, claimant received a written warning for attendance for her absences on October 15, 2019 and October 23, 2019. (Exhibit 3) The warning states that future absences may result in a "written warning and/or termination." (Exhibit 3) On November 20, 2019 and November 21, 2019, claimant was absent due to her child's illness and notified employer prior to the beginning of her shifts. (Schnell Testimony) On November 23, 2019, claimant was absent from work due to her child's illness and did not notify employer prior to the beginning of her shift. (Claimant Testimony) On November 24, 2019, claimant was absent from work due to her child's illness and notified employer via text message prior to the beginning of her shift. (Claimant Testimony) Claimant notified employer of absences via text message in the past and had not

been told that it was unacceptable. (Claimant Testimony) Employer considers claimant's absences on November 23, 2019 and November 24, 2019 to be two no-call/no-show absences. (Schnell Testimony) On November 24, 2019, employer discharged claimant for violation of employer's attendance policy. (Schnell Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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 disqualification shall continue 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(1)(a) provides:

a. "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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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).

Excessive absences are not considered misconduct unless unexcused. 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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10.

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*, 321 N.W.2d at 9; *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. See *Gaborit*, 734 N.W.2d at 555-558. An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

Claimant's absence on November 23, 2019 is unexcused because it was not properly reported to employer. Claimant's other absences are excused because they were for reasonable grounds and were properly reported. One unexcused absence is not excessive. Employer has not met its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed.

DECISION:

The January 30, 2020 (reference 07) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn