

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANTANNA C THOMAS
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 22A-UI-01488-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/28/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On December 20, 2021, claimant Santanna C. Thomas filed an appeal from the December 10, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Tuesday, February 8, 2022. The claimant, Santanna C. Thomas, participated. The employer, Casey's Marketing Company, participated through Lynn Schick, Store Manager at Davenport Two. No exhibits were offered or admitted into the record.

ISSUE:

Was the claimant discharged from employment for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Casey's Marketing Company on October 26, 2020. Throughout his employment, claimant worked part-time hours for the employer as a team member. Claimant worked for the employer until November 29, 2021, when he was discharged.

Claimant was scheduled to work from 5:00 p.m. until midnight on Sunday, November 28, 2021. He could not report to work that day because of pain related to a shoulder injury. Claimant first sent Schick a text message to let her know that he would not be at work that evening. When she did not respond to his text message, he next attempted to call her on her cell phone. She did not answer this call. Claimant then tried to call the store to report the absence, and no one answered the phone there either.

When claimant reported to work the following day, he clocked into work and then Schick asked him to come into the office with her. Once in the office, Schick notified claimant that he was being discharged because of two no-call/no-show absences and because he was rude to customers. Claimant denies he was a no-call/no-show for two days.

The employer's attendance policy provides that two consecutive no-call/no-show absences amount to a voluntary quit from employment. The policy also outlines a disciplinary process the employer will follow if an employee is chronically absent. Claimant was never issued any formal disciplinary actions related to absenteeism. Schick sent claimant a text message on one occasion and talked to him on another occasion related to missing work to care for his sister's children. Claimant was not aware his job was in any jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Since the employer does not have a policy as set out in Iowa Admin. Code r. 871-24.25(4), the separation a voluntary quit due to no-call/no-show absences.

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.

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).

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*, 321 N.W.2d at 6; *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*, 734 N.W.2d at 554. 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the

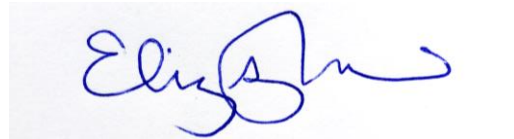
following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory, and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias, and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant provided credible testimony regarding his attendance and the end of his employment. The administrative law judge believes claimant did not report to work on November 28 and made multiple efforts to reach the employer but was unsuccessful. Schick's testimony was, at times, contradictory, and her memory was lacking regarding the end of employment. Her version of events was not reliable.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. A failure to report to work without successful, proper notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. The employer did not establish that claimant had other unexcused absences or that he was ever formally warned that his job was in any jeopardy. The administrative law judge finds that the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The December 10, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 24, 2022
Decision Dated and Mailed

lj/lj