

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARTINA M AZELTON
Claimant

APPEAL NO. 17A-UI-09654-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 08/20/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a -- Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 14, 2017, reference 02, which denied unemployment insurance benefits, finding the claimant was discharged from work for excess unexcused absenteeism. After due notice was provided, a telephone conference hearing was held on October 6, 2017. Claimant participated. Participating as a witness for the claimant was Mr. Paul Short, roommate. Although duly notified, the employer indicated they would not be participating in hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Martina Azelton began her employment with Nordstrom, Inc. in December 2014. The claimant worked as a full-time customer return associate and was paid by the hour. Ms. Azelton normally worked 10:00 p.m. to 6:00 a.m. five nights per week and her immediate supervisor was Ms. Jamie Wolf.

Ms. Azelton was informed that she had been discharged from employment on August 20, 2017, after she exceeded the permissible number of attendance violations allowed under the company's attendance policy.

Under the terms of the policy, employees received one infraction point for each day's unexcused absence and a portion of an infraction point each time they are late or leave work early. Employees are subject to discharge if they accumulate eight infraction points, but are allowed to roll off one infraction point for each 30 days of good attendance. The company policy also provides that up to three consecutive days of absence may be considered a continuation of the first day's absence due to illnesses, provided the employee calls in each day. If it is determined that the employee's consecutive days of absence meet the continuing absences employer's criteria, the employee is assessed only one infraction point for up to three days of absence.

The events that caused Ms. Azelton's discharge began when the claimant left a voice message for her supervisor prior to the beginning of her work shift on Wednesday, August 16, 2017. Ms. Azelton left a message for her supervisor stating that she was not going to report for work that day because of "family issues" and making a reference to her "eye". Ms. Azelton had been notified that an uncle, who resides in the state of Nebraska, was ill and she anticipated that family would be going to visit him. Because of past eye issues, she believed that a recent scratch on one eye would be sufficient to allow her to be absent for up to three days and only be assessed one point. At the time of the call, Ms. Azelton believed she had accumulated 6.75 infraction points and one additional infraction point would not cause her to be discharged. The claimant had been close to point maximum in the past and had been on notice that termination would take place at eight points.

Although Ms. Azelton was aware that established company policy required that employees call in each day, even if the absence was for multiple days for the same reason, she neglected to call in on August 17, 2017, because she was "too busy". On August 18, 2017, Ms. Azelton called the company telephone number, but did not make contact with her supervisor. The claimant elected not to leave a message reporting that she was going to be absent on the company's voice recording equipment as required by company policy, because she was concerned that "another supervisor may have gotten the message." When Ms. Azelton called to verify her working hours for her shift on August 20, 2017, she was informed by her supervisor that she was no longer employed. Her most recent absence had caused her to exceed the excessive absence point limit. The claimant had not called in each day as required, and the reason stated as "personal time" did not allow the three days absence to be assessed one point. Ms. Azelton elected not to contest her discharge or the reason.

It is the claimant's belief that the company elected to discharge her because of disputes with other workers.

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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code Section 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. Iowa regulations define misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

Discharge for misconduct.

(1) Definition.

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 has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The question in this case is whether the evidence in the record establishes 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). The law limits disqualifying misconduct to substantial and willful wrong-doing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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 were properly reported to the employer. Iowa Administrative Code r. 871-24.32(7). Also see *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 190 (Iowa 1984).

The requirements for finding of misconduct based upon absences are two-fold. First, the absences must be excessive. The determination of whether absences are excessive necessarily requires consideration of past acts and warnings. Second, the evidence must establish that the most recent absence that prompted the decision to discharge employee was unexcused. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds" or because it was not "properly reported". The court in *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 190, at 191 held that excused absences are those with "appropriate notice."

An employer's point system or no fault absenteeism policy is not dispositive of the issue of qualification of benefits, however an employer is entitled to expect employees to report for work as scheduled or to be notified as to when and why the employee is unable to report to work. The claimant's absences from August 16 through August 18, 2017, may have been for reasonable grounds, although the claimant's testimony and her statements to the agency about the reasons are varied. The only absence that is excused, however, is the one on August 16, 2017, as that is the only absence during that time that the claimant properly reported to her

employer. Claimant did not properly notify the employer of her absences on August 17 or August 18, rendering them unexcused. The claimant knew she was required to call in each day even if she believed the three days absences would be condensed to one infraction point. On the second day of absence, the claimant failed to call in because she was “too busy” and on the third day, she made a call to the employer’s number but elected not to leave a message as required by policy when she could not directly reach her supervisor.

The claimant does not dispute the accumulation of 6.75 infraction points prior to calling off work on August 16, 2017. She was aware that she would be discharged if she accumulated eight infraction points. The administrative law judge concludes the claimant’s most recent failure to properly notify the employer on two of the three days of her absence in addition to her previous unexcused absences establishes the claimant’s unexcused absences to be excessive.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Ms. Azelton was discharged for job misconduct. The claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements. The employer’s account will not be charged.

DECISION:

The representative’s decision dated August 14, 2017, reference 02, is affirmed. Claimant was discharged for misconduct in connection with her employment. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs