

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA K FLATMAN
Claimant

FOCUS SERVICES LLC
Employer

APPEAL 19A-UI-09635-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/03/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On December 5, 2019, the claimant filed an appeal from the November 26, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 17, 2020. Claimant was present, but submitted Exhibits A and B in lieu of testifying. Matthew Flatman represented claimant for purposes of cross examination and making a closing argument. Any facts not already in the record stated by Mr. Flatman during his closing argument were not considered by the administrative law judge. Employer participated through director Joy Hoagland and assistant director Rachel Jetter. Jessi Flint observed. Employer was represented by Karina Holt. Employer's Exhibits 1 through 6 were received.

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 began working for employer on June 4, 2018. Claimant last worked as a full-time agent. Claimant was separated from employment on November 4, 2019, when she was terminated.

Employer has an attendance policy providing for progressive discipline if an employee is absent or leaves work early. Claimant was aware of the policy.

On July 23, 2019, claimant applied to take Family and Medical Leave Act (FMLA) leave for her own serious medical condition. The dates of leave requested ran from August 2, 2019, through October 28, 2019. Employer granted claimant's request.

Claimant worked intermittently during the leave, but employer did not extend the approved leave date based on the intermittent work. Instead, employer reminded claimant that her approved leave ended on October 28, 2019. Claimant did not ask to extend the leave. Claimant did not submit a release to return to work on October 28, 2019, when the approved leave officially ended.

On October 29, 2019, claimant was absent because her husband was ill. Employer gave claimant a verbal warning.

Claimant's medical condition caused her to lose her voice. Being able to talk was an essential function of her job.

On October 30, 2019, claimant left work early after losing her voice. Employer gave claimant a written warning for the absence.

On October 31, 2019, claimant was absent for the entire shift. Employer gave claimant a final, written warning.

On November 4, 2019, claimant left work early after losing her voice. Employer terminated her the same day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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).

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 term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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. Absences due to properly reported illness are excused, 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

In this case, claimant's last attendance incident was due to a medical condition. Claimant properly informed employer she needed to leave work early. This attendance event is considered excused pursuant to unemployment law. The fact that claimant's FMLA leave had expired and/or that she had not applied for additional leave is inconsequential to this decision. FMLA provisions were enacted to protect an individual's employment, not to be used as a weapon by an employer against its employee.

Because claimant's last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, the separation from employment cannot be considered disqualifying.

DECISION:

The November 26, 2019, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant.



Christine A. Louis
Administrative Law Judge
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January 22, 2020
Decision Dated and Mailed

cal/scn