

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KELLY K WADE**  
Claimant

**KASA SOLUTIONS**  
Employer

**APPEAL 16A-UI-02727-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/24/16  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Absenteeism  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-Finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 29, 2016 (reference 01) unemployment insurance decision that allowed benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on March 30, 2016. The employer participated through Nathan Boyd, Vice President. Employer's Exhibit One was admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents.

The claimant participated by way of written statement (Claimant's Exhibit A) because she was unable to attend due to new employment. The claimant is advised to report any wages earned as she has continued to file weekly claims and receive benefits through the week ending March 26, 2016.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits and, if so, can the repayment of those benefits to the Agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a receptionist/account manager beginning July 6, 2015 and was separated from employment on January 29, 2016; when she was discharged.

The employer's policy requires employees to notify management (Mr. Boyd) via text message or phone prior to a shift beginning to properly call off a shift. The policy also requires employees

submit a doctor's note to excuse absences related to illness. The claimant was made aware of the policy at hire. During the claimant's employment, she had 31 unplanned absences and provided three doctor's notes for absences on September 14, 2015, October 26, 2015, and January 18, 2016 (Employer's Exhibit One). The majority of the claimant's absences stemmed from her own illness, illness of her minor children, or childcare issues. The claimant also had a personal injury related to her tailbone that she attributed to some of her absences (Claimant's Exhibit A). The employer reported that sometimes the claimant properly reported absences and sometimes she did not. The claimant also had a pattern of calling off either the day before or after holidays. Due to the excessive absences, the employer reported the claimant missed 20 percent of her total scheduled shifts while employed.

She was first issued disciplinary action related to attendance as part of her 90 days in October 2015 and then issued a written warning for continued attendance issues on October 27, 2015. The claimant was then verbally counseled on January 6, 2016; again for attendance. After January 6, 2016, the claimant called off January 20, 2016 and properly reported her absence due to illness. On January 28, 2016, the claimant went to the emergency room (Claimant's Exhibit A) and properly called off her absence to Mr. Boyd on January 29, 2016; due to continued illness. The claimant did not furnish a doctor's note to support the absence because she was discharged by Mr. Boyd on the January 29 but even if she had, the employer reports she would have still be discharged based on her pattern of attendance.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2728.00 since filing a claim with an effective date of January 24, 2016; through the week ending March 26, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview on February 26, 2016.

## **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.

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).

The law limits disqualifying misconduct to substantial and willful wrongdoing 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 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." 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).

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. There is no question that the claimant had excessive absences, inasmuch as she missed 20 percent of her scheduled hours while employed and missed work on 31 occasions in less than eight months employment. The claimant was issued warnings about her attendance in October 2015 and January 2016.

The second requirement, however, is 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 majority of the claimant's absences were related to personal illness or her children's illness. Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. In addition, the final absence on January 29, 2016 was properly reported to Mr. Boyd and for medical purposes, following the claimant's visit to the emergency room on January 28, 2016. The administrative law judge is sympathetic to the employer, who was extremely accommodating to the claimant and prolonged her employment longer than most employers would allow, given her frequency of absences. However, the employer has not established that the claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the last absence was related to properly reported illness, 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, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

Because the claimant is eligible for benefits, she has not been overpaid benefits. As a result, the issues of recovery of any overpayment and possible relief from charges are moot.

**DECISION:**

The February 29, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The claimant is not overpaid benefits and the employer is not relieved of charges.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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