

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTEZ SMITH
Claimant

TWIN CITY TANNING WATERLOO LLC
Employer

APPEAL 16A-UI-07549-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/19/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 6, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on July 27, 2016. The claimant Martez Smith participated and testified. The employer Twin City Tanning Waterloo Inc. participated through Environmental Safety Manager Jesse Crane. Employer's Exhibits 1 and 2 were received into evidence.

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 was employed full time as a pretreatment technician from January 19, 2015, until this employment ended on June 20, 2016, when he was discharged.

The employer has an attendance policy in place which allows employees up to five occurrences. (Exhibit 2). The policy provides that if employees reach five occurrences within a calendar year, they are subject to discharge. Employees are issued one occurrence for absences of a full day or tardies of more than three hours. Employees are issued half an occurrence for tardies of less than three hours or if they need to leave less than three hours before the end of their shift. Claimant signed an acknowledgement of receipt for the attendance policy upon his hire.

On June 18 and 19 claimant was absent from work because he was incarcerated. These absences put claimant over the allowable number of occurrences. Just two months prior, on April 16, 2016, claimant called in due to personal reasons. Claimant was issued a final warning at that time and advised that further occurrences would lead to termination. (Exhibit 1). Before his April absence claimant received a verbal and a written warning for his attendance. Claimant was late to work on February 17 and March 2 and 3, 2016. Claimant called in due to bad

weather on February 3 and on January 25 because his daughter was having an asthma attack. On January 20, 2016, claimant left work early due to illness. Based on his attendance history, along with his most recent absences, the employer determined claimant's employment should be terminated.

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.

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.

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*, 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. 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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct

that is more accurately referred to as “tardiness.” An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep’t of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer’s point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Here, the claimant had at least six unexcused absences or tardies before being terminated. The employer has established that the claimant was warned in April 2016 that further unexcused absences could result in termination of employment and the final absence on June 19 was not excused. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The July 6, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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