

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TODD D ZUEHLKE**  
Claimant

**RCHP-OTTUMWA INC**  
Employer

**APPEAL 15A-UI-09467-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/02/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he was discharged for excessive absenteeism and tardiness after being warned. The parties were properly notified about the hearing. A telephone hearing was held on September 8, 2015. Claimant Todd Zuehlke participated on his own behalf. Employer RCHP-Ottumwa, Inc. participated through Human Resources Director Kelley Gaul-Houser and Manager of Ambulance Service David Howard. Claimant's Exhibit A was received. Employer's Exhibits 1 and 2 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: The claimant was employed full-time as an EMT beginning June 18, 2012, and was separated from employment on July 9, 2015, when he was discharged. The employer has a no-fault attendance policy. (Employer's Exhibit 1). The claimant had been warned about his tardiness. He was tardy on March 13, 2015. (Employer's Exhibit 2). This resulted in a written warning from his supervisor Manager of Ambulance Service David Howard. The warning put the claimant on notice that further tardiness could result in further discipline including suspension or termination. The claimant notified his supervisor, as he had on previous occasions, that he had a medical issue related to sleeping and his medication was causing him to oversleep by missing his alarm.

The claimant was late to work on June 22, 2015 due to his medications. His ambulance partner woke him up and he contacted dispatch to notify the employer he was late for work. Due to the scheduling, the claimant was not scheduled to work until July 9, 2015. During the stretch that he was off work, he spoke with Howard, who was traveling in another state. Howard referred

the claimant to speak with Director of the Emergency Room April Runnels. The claimant spoke with Runnels who told him to bring in documentation as he might qualify for job protected leave under the Family Medical Leave Act. The claimant obtained this documentation but did not present it to Howard or Runnels as they were both off work.

On July 8, 2015, Human Resources Director Kelley Gaul-Houser sent the claimant a termination letter and left a voice message informing him that he had been terminated. The claimant called her back the following day. She explained he had accrued his seventh point. When he explained it was due to a medical condition, she told him that it did not matter under the policy as he had still accrued seven points.

### 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. Benefits are allowed.

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."

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 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, supra*. However, there are exceptions, such as when a late call to an employer was justified when the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the conditions sufficiently improved. *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992).

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. The claimant had put his supervisor and other supervisors on notice of his medical condition. He notified the employer of his tardiness on June 22, 2015 as soon as feasibly possible. Because his 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, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

#### **DECISION:**

The August 14, 2015, (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. The benefits withheld based upon this separation shall be paid to claimant.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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