

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFF HUNT

Claimant

GREGORY MFG CO

Employer

APPEAL 20A-UI-08380-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
871 Iowa Administrative Code 24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136 § 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Respondent/Employer Gregory Manufacturing (“Gregory”) filed an appeal from a July 10, 2020 (reference 02) unemployment insurance decision that granted benefits finding the claimant, Jeff Hunt had been dismissed from work on June 24, 2020, for excessive absences, however his absences were due to illness and were properly reported, and that no misconduct had occurred. Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for August 28, 2020. Hunt appeared and testified. Bruce Widbin appeared and testified on behalf of Gregory. Exhibit 1 was admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?
Was the claimant overpaid benefits?
Should the employer’s account be charged?

FINDINGS OF FACT:

On July 26, 2010, Hunt commenced full-time employment as a machine operator with Gregory. Mike Jackson was his immediate supervisor. Hunt had excellent skills and he was a long-term employee.

Hunt had problems with attendance during his employment. Widbin, in human resources, testified Hunt has a problem with alcoholism and Hunt’s alcoholism effected his attendance at work. Hunt denied he is an alcoholic or that drinking alcohol has affected his attendance. Hunt reported he experienced a work injury to his back. He agreed representatives from Gregory had accused him that his past absences had been for alcoholism.

In January 2020, Widbin developed a new Attendance Policy and Point System for the employees ("Policy"). (Ex. 1) He distributed and explained the Policy to the Gregory employees. The Policy provides in relevant part:

5. Employees who are absent for more than 2 days and up to 10 consecutive scheduled work days, due to personal illness, can reduce the points down to 1 if upon return bring in a valid doctor's statement covering the period of time they were unable to work. All absences of 3 or more days require documentation. . . .

Point System

The attendance policy is based on a 2-point system. Points are assigned in the following manner:

Tardy (7 minutes or less)	1/4 Point
Tardy (8 minutes or more)	1/2 Point
Leave Early	1/2 Point
Full Day Absent	1 point
No Call/No Show	2 points

The Point System is based on rolling calendar quarters or rolling 90 days. Avoiding 2 points during any 3 month period or 90 day period is necessary to avoid negative ramifications.

Progressive Attendance Remediation Process:

- 2+ points in a quarter or 90 days
 - Verbal warning (supervision and/or HR) or termination
 - Optional life coaching
 - 90 day delay in wage evaluation
- 4+ points in a quarter or 90 days
 - Conversation with HR
 - Documented warning and/or possible termination
- 6+ points in a quarter or 90 days
 - Conversation with HR
 - Written warning and/or possible suspension or termination
- 8+ points in the previous year based on date of hire
 - Annual evaluation will be delayed 90 days
 - The annual evaluation will continue to be delayed another 90 days if the employee exceeds 2+ points the previous 90 days.

There will be no points assigned in the following instances:

Lack of Work	Military Duty
Scheduled Vacation per Policy	Jury Duty
Plaint Reported Injury	Pre-Approved Absence (see #4)
Death of Immediate Family	Pre-Approved Leave of Absence.

(Ex. 1)

On June 22, 2020 and June 23, 2020, Hunt did not show up for work. On June 23, 2020, Widbin called Hunt. Widbin testified Hunt admitted he had not eaten since June 18, 2020, and that he had been drinking and found face down in the woods and had no idea how he got there. Hunt denied making the statement. Hunt testified he told Widbin he had fallen and he had trouble

getting up because of a back condition. Widbin testified he gave Hunt an ultimatum that if he did not eat, stop drinking, and report to work on June 24, 2020, he would be terminated.

On June 24, 2020, at 3:30 p.m., Hunt called Widbin. Widbin testified Hunt asked if he still had a job. Widbin testified he said, "I'm sorry, Jeff, we agreed yesterday you would eat food and come to work. And if you didn't, you would not have a job. Based on that I have no option but to terminate you. You need to get your personal life in order."

Widbin testified Hunt had missed a great deal of work and that he had tried to be patient, forgiving, and accepting of Hunt's tardiness. Widbin reported he was not following policy by being lenient with Hunt.

Widbin reported on July 24, 2019, he had counseled Widbin that when he was working he had a good knowledge base and he was a good employee, but he needed to get things turned around at work, and that he had reached the end of his rope. Widbin reported he counseled Hunt numerous times, but he was unable to state when he counseled Hunt during the hearing.

Widbin testified Hunt did not provide a doctor's note or documentation for being absent on June 22, 2020, June 23, 2020, and June 24, 2020. The Policy requires an employee to provide such documentation, but it does not state an employee will be disciplined or discharged for failing to provide the documentation.

Widbin stated Hunt had eight points and fifty-two points total he was "more inclined" to terminate. Widbin reports he likes to have flexibility in discharging employees for earning points at work. The eight-point threshold does not automatically result in termination. Widbin did not specifically warn Hunt he would be terminated for a point violation under the Policy on June 24, 2020, if he failed to show up for work.

Hunt testified he reported he had injured his back at work on June 23, 2020. Widbin testified Hunt did not report a work injury. Hunt stated he went to the doctor, a Dr. Nathan, but could not recall when he attended the appointment or the name of the physician. Widbin testified Hunt never reported an injury to his back during his employment with Gregory.

REASONING AND CONCLUSIONS OF LAW:

Under Iowa Code section 96.5(2)a,

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.

871 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

And 871 Iowa Administrative Code 24.32(8) provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Id.* at 11. The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits; such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (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, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are

not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

871 Iowa Administrative Code 24.32(7), provides, “[e]xcessive 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 Supreme Court has held 871 Iowa Administrative Code 24.32(7) accurately states the law. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984)

Excessive absences are not considered misconduct unless unexcused. *Cosper*, 321 N.W.2d at 10. 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 and including discharge for the absence under its attendance policy. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007)

The determination of whether unexcused absenteeism is excessive requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192. The absences must also be unexcused. *Cosper*, 321 N.W.2d at 10. An absence can be unexcused if it did not constitute reasonable grounds or if it was not properly reported. *Id.*; *Higgins*, 350 N.W.2d at 191. Excused absences are those with “appropriate notice.” *Cosper*, 321 N.W.2d at 10. Absences in good faith, for good cause, and with appropriate notice are not misconduct. *Id.* Such absences may be grounds for discharge, but not for disqualification of benefits because substantial disregard for the employer’s interest has not be shown and this is essential for a finding of misconduct. *Id.*

Widbin testified he discharged Hunt for violating the Policy, by failing to provide medical documentation supporting his absences on June 22, 2020, June 23, 2020, and June 24, 2020, stating he gave Hunt an ultimatum the day before that he needed to eat, stop drinking, and report to work on June 24, 2020. The record does not reflect that Widbin told Hunt he needed to either report to work or provide medical documentation supporting his absences. The record does not reflect Widbin warned Hunt that he would be terminated on June 24, 2020, if he failed to report to work under the Policy point system. While Gregory had the right to terminate Hunt’s employment, I do not find the employer has met its burden of proof that Hunt engaged in misconduct that should preclude Hunt from receiving benefits. Benefits are allowed. Given this finding, the issue of whether Hunt received an overpayment is moot. Hunt is entitled to unemployment benefits under Iowa law and the supplemental Federal Pandemic Unemployment Compensation benefits he has received.

DECISION:

The July 10, 2020 (reference 02) unemployment insurance decision denying unemployment insurance benefits is affirmed. The employer has not established the claimant was discharged for misconduct for a disqualifying reason.

A handwritten signature in black ink, appearing to read 'H. Palmer', is written over a horizontal line.

Heather L. Palmer
Administrative Law Judge
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August 31, 2020
Decision Dated and Mailed

hlp/scn