

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NORMAN M SNOW
Claimant

O'REILLY AUTMOTIVE INC
Employer

APPEAL 17A-UI-00156-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
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 December 27, 2016, (reference 05) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2017. The claimant participated personally. The employer participated through Jacqueline McKinney, Leave of Absence Administrator. Cody Ausborn, Store Manager, also testified. Employer Exhibits 1 through 4 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 delivery specialist and was separated from employment on August 3, 2016, when he was discharged.

Prior to discharge, the claimant received the employer's policies and procedures, and had only been verbally warned about tardiness. The claimant last performed work on July 1, 2016 before being hospitalized. On July 5, 2016, the claimant's father notified the employer of the claimant's hospitalization. The claimant was then transferred to a second hospital in Council Bluffs for evaluation. Upon release, the claimant notified his manager of his intent to return to work. The claimant was off work for over a week while hospitalized. Due to his short tenure, he did not

qualify for a leave of absence under FMLA. The employer explained the claimant would need to complete a "fit for duty" form to return to work. The claimant attempted to present his manager, Cody Ausborn, a generic doctor's note from Council Bluffs that released him to return to work. Mr. Ausborn does not remember being given the note. But the claimant stated the employer would not accept the note because it did not contain enough information. He was then given the "fit for duty" form. The claimant called his primary doctor to help complete the form but the doctor was on vacation for two weeks. Then the claimant went to a walk-in clinic, to see if it would complete the paperwork for him to return to work. It would not. The claimant called the original hospital he had been admitted to, who refused to complete the paperwork. He called back his primary doctor and made an appointment for August 3, 2016. He notified Mr. Ausborn of the doctor's appointment and upon leaving the doctor, went to the employer to submit the paperwork. He was then informed due to his extended absences and failure to complete the paperwork that he was discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1024.00, since filing a claim with an effective date of November 20, 2016. The administrative record also establishes that the employer did participate in the December 19, 2016 fact-finding interview by way of Ms. McKinney and Mr. Ausborn.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not 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(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined 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 legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. 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).

In the specific context of absenteeism the administrative code provides:
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.

871 IAC 24.32(7); See *Higgins v. IDJS*, 350 N.W.2d 187, 190 n. 1 (Iowa 1984) ("rule [2]4.32(7)...accurately states the law").

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's leave policy is not dispositive of the issue of qualification for benefits.

Both parties were in an untenable situation because the employer would not honor the furnished doctor's note without completion of a "fit for duty" form. The claimant made multiple good faith efforts to obtain the necessary documentation, calling his personal physician, the hospital that treated him, and going to a walk-in clinic. The claimant made the employer aware of his August 3, 2016 doctor's appointment and intent to return. The employer reasonably needed updated medical information in order to put him back to work in a position consistent with medical restrictions, if any. However, the claimant did not quit but was discharged by the employer, which places the burden of proof on the employer. The inability to obtain medical documentation required by the employer, in spite of his reasonable attempts to find another medical care provider, excused the failure to provide a medical excuse or release. Based on the evidence presented, no misconduct has been established and no disqualification is imposed. Benefits are allowed, provided claimant is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The December 27, 2016, (reference 05) decision is affirmed. The claimant was not discharged from employment due to job-related misconduct. Benefits are allowed, provided he is otherwise eligible. The claimant has not been overpaid benefits. The employer is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs