

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NATHAN A HERMAN
Claimant

APPEAL NO. 14A-UI-03157-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ECONOMY COATING SYSTEMS INC
Employer

OC: 02/16/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 12, 2014, reference 01, which denied unemployment insurance benefits finding that the claimant was discharged from work for excessive unexcused absenteeism after being warned. After due notice was provided, a telephone hearing was held on April 15, 2014. Claimant participated. The employer's witness was not available at the time of hearing. A message was left.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Nathan Herman was employed by Economy Coating Systems, Inc. from September 5, 2012 until February 17, 2014 when he was discharged for exceeding the permissible number of infraction points under the company's "no-fault" attendance policy. Mr. Herman was employed as a full-time production line worker and was paid by the hour. His immediate supervisor was Jeff Uling.

The employer utilizes a "no-fault" attendance policy that provides for the discharge of an employee who accumulates ten or more attendance infraction points during a specified rolling period of time. Under the company policy employees are subject to discharge if they are absent, leave early or are late or fail to notify the employer of impending absences. Mr. Herman was aware of the company policy and had been warned by the employer.

During the course of his employment Mr. Herman had been absent on six occasions due to an ear infection that he had associated with the requirement that he wear company earplugs. Mr. Herman had notified the employer of his absences and the reasons for them on each occasion. Mr. Herman had also been absent on one occasion due to an electrical emergency at his residence and had notified the employer. The claimant's final absence took place on

February 17. Mr. Herman was ill and could not report to work. Mr. Herman notified the employer in advance of the beginning of his shift as required reporting his impending absence.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 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.

871 IAC 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.

871 IAC 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 of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate,

intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

In the case at hand the evidence in the record establishes that the claimant's final absence was due to illness and that it was properly reported to the employer.

A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. The employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which the claimant was discharged was related to a properly reported illness no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 12, 2014, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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