

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN J STEINHOFF
Claimant

APPEAL 21A-UI-19109-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

**OC: 07/04/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) - Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Claimant, Justin Steinhoff, filed an appeal on August 30, 2021 from the August 26, 2021, (reference 01) unemployment insurance decision that denied benefits based upon claimant being discharged July 12, 2021 for excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on October 19, 2021. The claimant participated. The employer, Wells Enterprises, Inc. participated through Stacy Roupe. Judicial notice was taken of the administrative filed.

ISSUE:

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed full time, with a varied schedule as a mechanical technician 1, with their first day of work being August 10, 2020 and his last day worked being July 2, 2021. Claimant was separated from employment on July 12, 2021 due to claimant's excessive absenteeism. Employer has an employee handbook, policies on the issues at hand and Claimant was given a copy and advised how to access it online. Claimant had knowledge of these policies. The employer called and talked with claimant on July 5, 2021 regarding claimant's point status and he was nearing a point total to be terminated. Claimant was warned and knew his job was in jeopardy. Claimant requested FMLA, but was denied as he had previously taken a leave of absence and did not have enough time in to qualify for a new leave. Absences are tracked on a rolling twelve-month basis, with absences falling off when they exceed twelve months of age. The below reflects the dates of claimant's absences and warnings, the reporting of absences and the reason for the absence.

Date	Reporting	Reason for Absence	Points
07/12/21	Employer terminated Claimant for excessive absenteeism.		
After July 9	Employer didn't track. Claimant didn't call, knowing they were over 10 points.		
07/09/21	Called, No Show, Full Day	Unknown	10.5
07/07/21	Called, No Show, Full Day	Unknown	9.5
07/06/21	Called, No Show, Full Day	Illness	8.5
07/05/21	Employer calls and warns claimant is close to termination, given point status.		
06/01/21	Called, No Show, Full Day	Illness	7.5
05/09/21	Called, No Show, Full Day	Non-Illness Matter	6.5
03/29/21	Called, No Show, Full Day	Flat Tire	5.5
03/28/21	Called, No Show, Full Day	Transportation Issue	4.5
02/01/21	Called, No Show, Full Day	Illness	3.5
01/31/20	Called, No Show, Full Day	Illness	2.5
11/04/20	Called, No Show, Half Day	Illness	1.5
09/08/20	Called, No Show, Full Day	Illness	1.0

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 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.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting 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. *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); 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 twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). 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. 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*. See, *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity.

The absences are excessive in number and not excusable (reporting/documentation). Claimant does not disagree with the above record, other than he thought he was at 9.5 points as of July 5, 2021 and thought he stopped calling in earlier than the employer's records reflected.

DECISION:

The August 26, 2021, (reference 01) unemployment insurance decision is **AFFIRMED**. Claimant was discharged from employment for a disqualifying reason. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

November 5, 2021
Decision Dated and Mailed

dh/kmj