

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DILLON R BURNS

Claimant

APPEAL NO. 14A-UI-04189-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOHERTY STAFFING SOLUTIONS

Employer

OC: 12/22/13

Claimant: Respondent (1)

Section 96.5-2-a Discharge

STATEMENT OF THE CASE:

Doherty Staffing Solutions filed a timely appeal from a representative's decision dated April 16, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. A telephone hearing was held on May 12, 2014 at which time both the claimant and the employer waived notice on the issue of whether the claimant's job separation was disqualifying. The claimant participated. The employer participated by Ms. Glenda Niemiec, Unemployment Insurance Administrator, and Ms. Kim Johnson, Onset Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Dillion Burns was employed by Doherty Staffing Solutions from August 16, 2013 until March 21, 2014 when he was discharged from his employment with the company. Mr. Burns was assigned by Doherty Staffing Solutions to work at Polaris Industries, a client employer. Mr. Burns worked as a full-time paint line employee and was paid by the hour. The claimant's onsite supervisor was Ms. Johnson.

Mr. Burns was discharged from his work assignment at Polaris Industries through Doherty Staffing Solutions on March 21, 2014 because he had exceeded the permissible number of attendance infractions under Polaris Industries' attendance policy. Employees of Doherty Staffing Solutions who are assigned to work with client employers are required to adhere to the client employers' policies while performing their duties.

Under the attendance policy at Polaris Industries, employees are subject to discharge if they have more than five instances of absence that are not pre-excused within a rolling 12-month period. Mr. Burns was aware of the attendance policy and had received a warning about attendance on October 9, 2013 and a final warning on January 28, 2014.

The final absence that caused Mr. Burns' discharge took place on March 20, 2014. On that date Mr. Burns was too ill to report for work and notified the employer of his impending absence before the beginning of the work shift, as required by company policy. Because the claimant's final absence caused him to exceed the permissible number of infractions allowed, he was discharged from employment. Mr. Burns had been absent on other occasions for medical reasons, however, those absences had been pre-excused and were not held against him under the company's attendance point system.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was discharged from employment for no disqualifying reason.

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).

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.

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, the employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. An 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 properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The representative's decision dated April 16, 2014, reference 01, is affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs