

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A PETERS
Claimant

APPEAL NO: 12A-UI-06617-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRO RESOURCES
Employer

OC: 03/11/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Julie A. Peters (claimant) appealed a representative’s June 6, 2012 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Pro Resources (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on June 27, 2012. The claimant participated in the hearing. Ashley Greene appeared on the employer’s behalf. Based on the evidence, the arguments of the parties, 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 work-connected misconduct?

Is the employer’s account subject to charge?

OUTCOME:

Reversed. Benefits allowed. Employer not subject to charge in current benefit year.

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and, to date, only assignment with the employer began on March 27, 2012. She worked full-time as a general laborer on a temp-to-hire basis at the employer’s Oelwein, Iowa, business client. Her last day of work was May 15, 2012. The employer discharged her on May 18, 2012. The reason asserted for the discharge was excessive absenteeism.

The employer only allows new employees to incur three attendance points within the first 90 days of employment. On April 18 the claimant had left early and been absent the major portion of her shift because she was sick; she was assessed one point for this occurrence. On May 16 the claimant called in an absence because her father had been taken to the hospital emergency room and was in critical condition. She spoke to the employer’s representative, who

indicated that if the claimant provided medical documentation regarding the absence, the employer might treat multiple days of absence as one point. The claimant did obtain the medical documentation, which she faxed to the employer on May 17. She was absent for the same reason on May 17, which was also covered by the documentation.

The claimant had planned to report for work on May 18. However, the employer's representative contacted her prior to her shift and indicated that the decision had been made to discharge her for having three attendance points within the first 90 days of the claimant's employment.

The claimant established an unemployment insurance benefit year effective March 11, 2012. She reopened the claim by filing an additional claim effective May 20, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness or other good cause 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 or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). The claimant did not have excessive unexcused absences, and the final absence was related to properly reported reasonable grounds; therefore, no final or current incident of

unexcused absenteeism occurred that establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. *Cosper*, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2010 and ended September 30, 2011. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's June 6, 2012 decision (reference 02) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw