

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARREN J COX
Claimant

PRESTAGE FOODS OF IOWA LLC
Employer

APPEAL 20A-UI-13088-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 3, 2020, (reference 01) unemployment insurance decision that denied benefits based upon discharge due to excessive unexcused absenteeism and tardiness after being warned. The parties were properly notified of the hearing. A telephone hearing was held on December 21, 2020. The claimant Darren J. Cox participated and testified. The employer Prestage Foods of Iowa, LLC participated through human resources employee Sarah Adams. Claimant's Exhibit A was admitted. Employer's Exhibits 1-3 were admitted.

ISSUE:

Is the claimant's appeal is timely?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production team member from April 23, 2019 until August 30, 2019, when he was terminated.

Employer maintains an attendance policy that states if an employee earns ten attendance points they will be terminated. Missing more than 51% of a shift earns an employee one point; if an employee misses less than half of a shift they will earn a half point. Claimant was aware of the policy.

In July 2019, claimant received a verbal counseling and was provided with a copy of the attendance policy for reaching seven points. Claimant's points were reset to zero on August 4, 2020. He was absent on August 6, 7, 9, 13, 14, 15, 16, 19, and 20. Claimant left his shift early without supervisor permission on August 8, 12, 21, and 23. Claimant did not provide doctor's notes for any of the August 2020 absences.

On August 26, 2020, claimant received a final written warning. He left work early on August 26, 28, and 29, 2020. Employer terminated claimant's employment for earning ten points on August 30, 2020.

A disqualification decision was mailed to claimant's last known address of record on September 3, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 13, 2020. The appeal was not filed until October 21, 2020, which is after the date noticed on the disqualification decision. However, the claimant testified the address in the decision was incorrect. The house number was off by two digits. As a result, claimant did not receive the decision. On October 21, 2020, Claimant contacted the Benefits Bureau to determine the status of his benefits and learned the decision had been issued and mailed to the wrong address. He filed his appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

In this case, Iowa Workforce Development mailed claimant a decision denying benefits to an incorrect address. Without clear notice of a denial decision, claimant did not have a reasonable opportunity to file an appeal. When claimant realized he had been denied benefits, he filed an appeal immediately. The appeal should be accepted as timely.

The next issue is whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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).

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.

The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” *Higgins v. Iowa Dep’t of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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 due to properly reported illness are excused, 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. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp’t Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991).

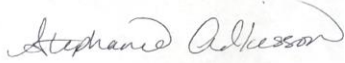
The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

An employer is entitled to expect its employees to report to work as scheduled. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant’s history of unexcused absenteeism, is considered excessive. Benefits are withheld.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer’s policy concerning attendance. Claimant was warned concerning this policy.

DECISION:

The September 3, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.



Stephanie Adkisson
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January 7, 2021
Decision Dated and Mailed

sa/mh