

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES T MONKMAN
Claimant

ARCHER-DANIELS-MIDLAND CO
Employer

APPEAL 19A-UI-06219-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/14/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – DM – Excessive unexcused absenteeism

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the August 2, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 28, 2019, at 2:00 p.m. Claimant participated. Employer participated through Susan Detterman, Human Resources Administrative Assistant. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge due to 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 Journeyman Mechanic from January 12, 2015 until his employment with Archer Daniels Midland Co. ended on July 16, 2019. (Detterman) Claimant worked from 6:30 a.m. until 5:00 p.m. Monday through Thursday. (Detterman) Claimant's direct supervisor was Jeff Iburg, Maintenance Supervisor. (Detterman)

Employer has a points-based attendance policy with progressive discipline. (Detterman) The policy requires an employee to notify employer of an absence prior to the beginning of the employee's shift. (Detterman) Claimant received training on the attendance policy during orientation and had access to the policy online. (Detterman)

Claimant had multiple absences, which contributed to his separation from employment. Claimant was absent February 22, 2018 due to illness and notified employer prior to the beginning of his shift. (Detterman) Claimant was absent February 27, 2018 for an unknown reason and notified employer prior to the beginning of his shift. (Detterman) Claimant was absent April 19, 2018 due to illness and notified employer prior at the beginning of his shift. (Detterman) Claimant was absent August 2, 2018 for an unknown reason and notified employer prior to the beginning of his shift. (Detterman) Claimant was absent February 11, 2019 due to illness and notified employer prior to the beginning of his shift. (Detterman) Claimant was absent March 13, 2019 due to a family member's illness and notified employer prior to the

beginning of his shift. (Detterman) Claimant was absent June 27, 2019 for an unknown reason and notified employer prior to the beginning of his shift. (Detterman) Claimant was absent July 15, 2019 for an unknown reason and notified employer prior to the beginning of his shift. (Detterman)

Claimant received written warnings regarding his attendance on August 2, 2018; March 13, 2019 and June 27, 2019. (Detterman) The warnings stated the number of points claimant had accrued under employer's attendance policy and alerted claimant that further absences may lead to termination of employment. (Detterman) Claimant knew that his job was in jeopardy. (Claimant) On July 16, 2019, employer discharged claimant for violation of the attendance policy. (Detterman)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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).

Excessive absences are not considered misconduct unless unexcused. The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10. An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

Absences due to properly reported illness 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. Iowa Admin. Code r. 871-24.32(7); *Cosper*, 321 N.W.2d at 9; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, 350 N.W.2d at 191. When claimant does not provide an excuse for an absence the absence is deemed unexcused. *Id.*; see also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

Excessive absenteeism has been found when there has been seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

Claimant's absences on February 22, 2018; April 19, 2018; February 11, 2019 and March 13, 2019 are excused because they were due to illness and properly reported. While properly reported, claimant's remaining four absences are unexcused because claimant did not provide a reason for the absence. Claimant had four unexcused absences in 18 months. The last two unexcused absences were accrued within a month of each other and after claimant had received written warnings that further absences may lead to termination of his employment. Claimant's unexcused absenteeism was excessive and constitutes job-related misconduct. Benefits are denied.

DECISION:

The August 2, 2019 (reference 01) unemployment insurance decision is affirmed. Benefits are denied.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs