

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMUEL A THOMPSON
Claimant

RANDSTAD US LLC
Employer

APPEAL 19A-UI-09038-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/18
Claimant: Respondent (1R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On November 18, 2019, the employer filed an appeal from the November 8, 2019, (reference 03) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 11, 2019. Claimant participated. Employer participated through site manager Iris Villigas. Employer's Exhibit 1 was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a temporary staffing agency. However, Lennox is its only client in the Marshalltown area. Claimant was made aware of this when he began his employment.

Claimant began his temp-to-hire assignment at Lennox on July 29, 2019. Lennox allows temp-to-hire employees to accrue up to 24 attendance points during the probationary period.

Claimant was absent on four occasions due to illness. His absences were properly reported.

Employer verbally warned claimant about his attendance in September 2019.

On October 21, 2019, claimant called site manager Iris Villigas and notified her he was going to be absent that day due to illness. Villigas informed claimant that his absence would put him

over the allotted 24 points and ended his assignment. Claimant made a comment about work during the winter being difficult due to illness.

The Benefits Bureau of Iowa Workforce Development has not issued an initial decision on the issue of whether claimant is able to and available for and is actively searching for work.

REASONING AND CONCLUSIONS OF LAW:

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

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 due to absenteeism, 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.

In this case, employer acknowledges that all of claimant's absences were due to properly reported illness. These absences are considered excused under unemployment law. Employer did not establish claimant was terminated for excessive, unexcused absences.

Likewise, employer did not establish claimant resigned when he failed to request another assignment, as both parties were aware and acknowledge Lennox was the only client employer has in Marshalltown. No other assignments were available.

Employer's main point of contention is that claimant is not searching for work during the winter. That issue will be remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and initial decision.

Because claimant is allowed benefits based on this separation from employment, there are no outstanding issues regarding overpayment of benefits and those issues will not be discussed further.

DECISION:

The November 8, 2019, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issue of whether claimant is making himself available for and searching for work this winter is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Christine A. Louis
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December 12, 2019
Decision Dated and Mailed

cal/scn