

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LLOYD REASNOVER**  
Claimant

**APPEAL NO: 15A-UI-09977-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY LLC**  
Employer

**OC: 07/26/15**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 24, 2015, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 21, 2015. The claimant participated in the hearing. Ron Udell, Human Resources Manager; Tricia Senelroth, Senior Human Resources Generalist; and Toni Kerr, Employer Representative; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time, second shift, finish operator for IAC Iowa City from February 1, 2013 to July 31, 2015. He was discharged for exceeding the allowed number of attendance points and being dishonest about his absence July 23, 2015.

Under the employer's attendance policy employees start with 60 points and points are deducted for absences and incidents of tardiness. If an employee has an absence and calls to report it, eight points are deducted; if he has an absence and fails to properly report it another point is deducted for a total of nine points. If an employee has an incident of tardiness of one minute to one hour and calls to notify the employer he will be late, one point is deducted, if he is late and fails to call to notify the employer another point is deducted. Employees are discharged upon reaching zero attendance points. The employer goes over the attendance policy with employees at the time of hire and two times per year as well as every time they receive a written warning.

On July 22, 2015, the claimant approached Human Resources Manager Ron Udell and told him that his uncle had passed away in Chicago and he needed time off to go to the visitation and funeral. He planned to leave that night after work and would be absent July 23, 2015. With that absence the claimant would have been at minus five points if he did not provide documentation such as a funeral program or obituary explaining his absence. The claimant returned to work July 24, 2015, but was tardy and did not notify the employer he was going to be late and received two attendance points as a result. On July 31, 2015, the claimant was also tardy and received one attendance point and was therefore at minus eight points. He did not provide any documentation of his absence July 23, 2015.

On July 30, 2015, Mr. Udell called the claimant into his office and told him the employer needed his documentation from his uncle's death by 3:00 p.m. that day as the claimant had yet to provide that information to the employer. The claimant stated his mother was working and would not be off work until sometime between 3:00 p.m. and 5:00 p.m. but would fax the documentation to the employer at that time. Mr. Udell waited until 5:00 p.m. but no documentation was forthcoming.

On July 31, 2015, the claimant supplied the employer with what appeared to be a fake funeral program. The printing was not lined up evenly and the words and picture of the claimant's uncle were off center and distorted. Additionally, the phone number for the funeral home was missing a digit. Mr. Udell looked up the number and called the funeral home and was told the funeral home never held a funeral for the claimant's uncle. Mr. Udell verified there were no other locations of that funeral home and that he was speaking to the correct individual who would know all of the pertinent information he was requesting from the funeral home. Mr. Udell also asked Senior Human Resources Generalist Tricia Senelroth to contact the church listed on the program and the church had no record of any services performed for someone by the claimant's uncle's name. Mr. Udell then met with the claimant and told him his information did not match what the church or funeral home told him and the claimant stated they were wrong but never brought forth any contradictory information, even when a grievance meeting was held August 27, 2015 about whether the claimant's termination should be reversed.

Mr. Udell told the claimant that he would be assessed eight points for his absence July 23, 2015, and that, in addition to the two points he accumulated July 24, 2015, and one point he accumulated July 31, 2015, that brought him to a total of minus eight points and his employment was subsequently terminated.

The claimant has claimed and received unemployment insurance benefits in the amount of \$3,448.00 for the eight weeks ending September 19, 2015.

Yolanda Green, the employer's representative, provided her contact information to the Department August 20, 2015, at 10:12 a.m. She waited for the fact-finder's call August 21, 2015, at 2:00 p.m. but did not receive a call. Ms. Green submitted written documentation prior to the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

With the claimant's July 23, 2015, absence he descended to negative five attendance points. He was then tardy without calling July 24, 2015, and received two more attendance points and was tardy July 31, 2015, and received one additional attendance point for a total of negative eight points. At that time the employer terminated the claimant's employment for excessive unexcused absenteeism.

While even if the claimant could have provided documentation that he attended his uncle's visitation in Chicago July 23, 2015, he still would have been discharged for having negative three attendance points, his testimony and the paperwork he did provide to the employer about the visitation were not credible. The visitation/funeral paperwork was not lined up or professionally created and the writing and picture of the claimant's uncle were off center and distorted. The program did not even contain a seven digit telephone number for the funeral home but rather only listed six digits. All of these items lead to the conclusion that the claimant was not forthcoming about his absence July 23, 2015, being related to his uncle's death.

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 absenteeism, is considered excessive. Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or

knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer’s account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer provided its contact information to the fact-finder the day prior to the fact-finding interview but was not called at the time for the hearing and therefore was denied the opportunity to participate in the fact-finding interview personally through the statements of Yolanda Green. The employer did submit written documentation. Consequently, the claimant’s overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$3,448.00.

#### **DECISION:**

The August 24, 2015, reference 02, decision is reversed. 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. The claimant has received benefits but was not eligible for those benefits. The employer participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$3,448.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs