

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REANN MERRILL
Claimant

APPEAL NO: 14A-UI-08030-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 10/06/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 1, 2014, reference 01, 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 August 26, 2014. The claimant participated in the hearing. Courtney Wilson, Human Resources Business Partner and Michelle Hawkins, 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 assistant machine operator for Wells Enterprises from May 28, 2013 to July 8, 2014. She was discharged for exceeding the employer's allowed number of attendance points.

The employer uses a no-fault, point-based attendance policy based on a rolling calendar year basis. One full day occurrence results in one point, an incident of tardiness of more than 90 minutes results in one point, and an incident of tardiness of less than 90 minutes results in one-half point. Points drop off after one year. Employees receive one weather day that can be used at any time without accumulating points. Employees are notified in writing upon reaching seven, eight and nine points, and receive another copy of the employer's attendance policy following each of those points. The point totals also appear on employees weekly pay stubs. Termination occurs when an employee accumulates ten attendance points.

On June 9, 2013, the claimant was sent home due to a foot injury and was required to have a doctor's release to return to work. She received one point for that absence. She was absent October 3, 2013, and received one point; she failed to punch in because she forgot her badge October 7, 2013, and received one-half of a point; she was absent December 13, 2013, due to car problems and received one point; she was absent February 2, 2014, due to family issues and received one point; she was absent March 6, 2014, but used a weather day and did not

receive a point; she was absent April 1, 2014, and received one point; she was absent April 10, 2014, due to family issues and received one point; she was absent May 2, 2014, and received one point; she was seven hours late in reporting to work May 11, 2014, and received one point; she was absent June 1, 2014, and received one point; and on July 6 through 8, 2014, she was absent due to properly reported illness and received three points placing her at ten points and her employment was terminated July 8, 2014.

On May 23, 2014, the claimant received a verbal coaching after accumulating seven points and on June 7, 2014, she received a written warning for accumulating eight points. On December 31, 2013, the claimant's point total was reduced by one because she did not use her weather day in 2013. On June 9, 2014, a point was deducted because one year had passed after an occurrence June 9, 2013.

The claimant sustained a work-related injury June 11, 2014, when she was hit in the face with an air hose with a stainless steel tip that was approximately one and one-half inches in diameter and approximately three inches long. She was sent to the hospital where a CAT scan was performed. The claimant was diagnosed with a facial contusion and told she may experience light headedness, headaches and nausea. She was placed on light duty but did not miss any work until her final three-day absence. The claimant experienced headaches every day following the injury and was absent July 6 through 8, 2014, due to severe migraines. She properly reported her absences to the employer.

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.

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 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(1)a provides:

Discharge for misconduct.

(1) Definition.

- 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 has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added).

While the claimant exceeded the allowed number of attendance points, her final three out of ten points were due to severe migraines resulting from her work-related injury. Because the final three absences were related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The August 1, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css