

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICK A LONG
Claimant

RING-O-MATIC INC
Employer

APPEAL 17A-UI-05457-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/23/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
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:

Ring-O-Matic (employer) filed an appeal from the May 9, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination it discharged Nick A. Long (claimant) for excessive unexcused absenteeism related to properly reported illness or injury which is not disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 19, 2017. The claimant participated. The employer participated through Operations Director Robert Zylstra and Operations Manager Corrine Wyma. Employer's Exhibit 1 was received. Department's Exhibits D1 and D2 were received.

ISSUES:

Is the appeal timely?
Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can 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: The claimant was employed full-time as an Assembly Technician beginning on January 3, 2017, and was separated from employment on April 25, 2017, when he was discharged. The employer has a policy that allows for five occurrence points in a rolling 52-week period. The claimant had multiple absences during his employment. He notified the employer of each absence prior to missing work.

The claimant left work early on April 19, 2017 because he had dental pain and was able to get an appointment with a dentist on an emergency basis. He notified his supervisor before he left.

The claimant missed work on April 21, 22, and 24 because he was recovering from his dental procedure. He notified his supervisor each day of his absence.

The unemployment insurance decision was mailed to the employer's address of record on May 9, 2017 and it contained a warning that an appeal must be filed by May 19, 2017. The employer received the decision within ten days of the date of mailing. Operations Director Robert Zylstra attempted to file the appeal online on May 18, 2017. He became aware the appeal was not accepted the beginning of the following week when he realized he had not received a confirmation email. The appeal was successfully filed on May 24, 2017, after he was able to confirm the Appeals Bureau had not received his appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is timely and the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

The employer's attempt to file an appeal in a timely manner was thwarted by an unsuccessful filing using the online appeal system and was not due to delay by the party. The appeal was filed within a reasonable time thereafter. Therefore, the appeal shall be accepted as timely and the administrative law judge has jurisdiction to make a decision on the claimant's separation.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

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* at 192. Second, the absences must be unexcused. *Cosper* 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* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. 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, supra*.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because his last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and any charges to the employer's account cannot be waived.

DECISION:

The employer's appeal is timely. The May 9, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The issue of overpayment is moot and any charges to the employer's account cannot be waived.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs