

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RANDALL D WHITE
Claimant

WAL-MART STORES INC
Employer

APPEAL 14A-UI-13435-KCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/30/14
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 18, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2015. The claimant participated and was represented by attorney Phillip Meyers. The employer participated through Christine Kinsey, human resources manager and employer representative, and Nancy Kinsey, witness.

The employer's representative sought to admit a 15-page document which consisted of a copy of an exit interview, coaching records, new associate orientation checklist, new associate risk control checklist, new associate safety checklist, and the employer's attendance policy. The administrative law judge did not have the document at the time of the hearing and the claimant's attorney had not received the document. After the hearing, the document was found in the bureau and a copy was faxed to the claimant's attorney. The claimant's attorney did not object to admitting the document into evidence. The document is received into evidence as Employer's Exhibit 1.

ISSUE:

Whether the claimant was discharged for a disqualifying absence?

FINDINGS OF FACT:

The claimant was hired by the employer on March 16, 2005. He was separated on January 26, 2014 for absenteeism. The absence occurred on January 26, 2014, when the claimant drove to work and reported that he could not work the night shift as scheduled, due to a lack of heat in his house and fear of his pipes bursting. It had suddenly become very cold and his furnace was not working. The claimant was using space heaters to keep the pipes from freezing. He had no one else to watch the space heaters while he worked that night and he had experienced a fire previously with space heaters. After providing in-person notice to the employer, the claimant went back home and also called the employer's call-in system to report his absence for the upcoming shift. The employer has a point-system with a rolling calendar.

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 § 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 claimant properly reported that he would be absent for his upcoming shift for what was an emergency at his home, the real risk of bursting pipes on a suddenly cold night. He used two mechanisms to report the future absence: physically reporting to work and talking to staff about the situation, and calling using the employer's call-in system.

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."

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A 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. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the

excessiveness standard. Because his absence was otherwise related to a properly reported emergency, which is a reasonable basis for the absence, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

The employer has not met the burden of proof to establish misconduct. Benefits are allowed.

DECISION:

The December 18, 2014, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs