IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ARDADI A ADUM Claimant **AMAZON.COM SERVICES, INC.** Employer	**APPEAL 22A-UI-02858-AR-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/12/21** **Claimant: Respondent (1)**

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:

The employer, Amazon.com Services, Inc., filed an appeal from the January 5, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that claimant was discharged from employment during a trial period for dissatisfactory work, which did not constitute misconduct. The parties were properly notified of the hearing. A telephone hearing was held on February 25, 2022. The claimant did not participate. The employer participated through Jeffrey Willoughby. Employer's Exhibits 1 through 3 were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

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: Claimant was employed part time as a tier 1 flex associate from July 2, 2021, until this employment ended on August 14, 2021, when he was discharged.

In claimant's role, he was responsible for selecting shifts he intended to work. Throughout the employment period, claimant missed a significant number of shifts. In all but the first instance, he did not provide appropriate notice of his absence to the employer. Claimant provided no reason for his absences to the employer.

The employer has an attendance point policy that provides that employees will be reviewed for termination if they accumulate eight attendance points in a 60-day period. At the time of claimant's discharge, he had accumulated 31 points.

Claimant never received a warning about his attendance. The employer's witness testified that the attendance points accumulated so quickly that the employer did not have an opportunity to warn him prior to discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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(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 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).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, 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*, 321 N.W.2d at 6; *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*, 734 N.W.2d at 554. 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*, 350 N.W.2d at 192. Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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," or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Higgins*, 350 N.W.2d at 191; *Cosper*, 321 N.W.2d at 10. An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Even though claimant's absences were numerous, he was not warned that his attendance was jeopardizing his employment prior to the time at which he was discharged. Accordingly, no disqualification is imposed, and benefits are allowed, provided claimant is otherwise eligible.

Because the separation is not disqualifying, the issues of overpayment, repayment, and participation are moot.

DECISION:

The January 5, 2022, (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 issues of overpayment, repayment, and participation are moot.

Alexis D. Rowe
Administrative Law Judge

March 16, 2022
Decision Dated and Mailed

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