

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTA M LINDEMANN
Claimant

APPEAL 17A-UI-09866-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAFELITE SOLUTIONS LLC
Employer

**OC: 09/03/17
Claimant: Respondent (2)**

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:

Safelite Solutions, LLC (employer) filed an appeal from the September 21, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Krista M. Lindemann (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 11, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Leave of Absence Supervisor Trista Sanchez and was represented by Donald Trella of ADP. Employer's Exhibit 1 was received. Official notice was taken of the administrative record, specifically the fact-finding documents and the claimant's database readout (DBRO).

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: The claimant was employed full-time as a Customer Service Rep II beginning on July 25, 2016, and was separated from employment on June 19, 2017, when she was discharged. The employer has a policy and procedure that once an employee misses eight calendar days of work, he or she is placed on leave status and needs to provide medical documentation supporting the absence from work. The claimant had been through the process three times beginning in November 2016 and successfully returned to work after each leave.

On March 18, 2017, the claimant began missing work due to illness and migraines. She missed eight calendar days and was placed on leave status. On March 29, 2017, the employer sent the

claimant a letter stating that she needed to return her accommodation request and supporting medical documentation by April 13, 2017. The claimant did not respond to that letter.

On April 26, 2017, the employer mailed another letter to the claimant, which she received on May 1, 2017. The employer again requested supporting medical documentation for her leave. She was informed that if she did not submit the information by May 3, 2017, her request for accommodation would be considered withdrawn and her absences would be subject to the attendance policy which might result in her discharge. The claimant did not respond to that letter.

On May 23, 2017, Leave of Absence Specialist Kellie Digel left a voice message for the claimant requesting the medical documentation and notifying the claimant if it was not received by May 26, 2017, she would be discharged. The claimant did not respond to the voice message. On June 19, 2017, the employer sent the claimant another letter stating her employment had ended due to a failure to provide medical documentation supporting her time away from work.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$1,272.00, since filing a claim with an effective date of September 3, 2017, for the five weeks ending October 7, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview, make a first-hand witness available for rebuttal, or provide written documentation regarding the claimant's separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 the 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); 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 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins, supra*.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The claimant's three-month absence is excessive. While the claimant's absences were related to illness; they are not excused as they were not properly reported. The claimant was put on notice at the end of March that she would need to provide medical documentation to excuse her absence. The claimant failed to provide documentation excusing her absences and was put on notice that failure to furnish this documentation would result in her discharge. The claimant did not respond and did not provide the requested medical documentation; therefore, her absences were not properly reported and are unexcused. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. 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. Iowa Code § 96.7. 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. Iowa Admin. Code r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

DECISION:

The September 21, 2017, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits in the amount of \$1,272.00. However, she is not obligated to repay the agency those benefits as the employer did not participate in the fact-finding interview. The employer's account shall be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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