

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JASON D OELMANN**  
Claimant

**APPEAL NO. 19A-UI-02707-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COGNIZANT TECHNOLOGY SOLUTIONS**  
Employer

**OC: 03/03/19**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cognizant Technology Solutions filed a timely appeal from a representative's unemployment insurance decision dated March 20, 2019, reference 01, which held claimant eligible to receive unemployment insurance benefits, finding that he was dismissed from work on March 6, 2019 for excessive absences, but finding that his absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was held on April 17, 2019. Claimant participated. Participating as a witness for the claimant was Andrew Greenburg. The employer participated by Ms. Clare Salgado, Human Resource Benefits Representative, and Ms. Lacy Adamson, Manager. Claimant's Exhibits 1 through 10 and Department Exhibit D-1 were admitted into the hearing record.

**ISSUE:**

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of job insurance benefits and whether the claimant resigned in lieu of being discharged.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Jason Oelmann was employed by Cognizant Technology Solutions from June 2018 until March 6, 2019, when he was given the choice of resigning or being discharged. Mr. Oelmann agreed to categorize his job separation as a quit, as there was no alternative except to be discharged.

Mr. Oelmann had exceeded the permissible number of attendance infractions allowed under the employer's "no fault" attendance policy. The claimant had been given a final written warning by the company on September 21, 2018. Mr. Oelmann had called off work most recently on March 5, 2019, because he was ill with a migraine headache and was unable to work. Mr. Oelmann had supplied medical documentation to the employer establishing that he was suffering from chronic migraine headaches and the claimant had provided numerous doctor's notes to the employer verifying that his absences were due to illness.

Because Mr. Oelmann had emphasized to the company that his absences were due to illness and that he had been diagnosed with chronic migraines, the employer proposed only a change in the wording regarding his final attendance infraction. Mr. Oelmann understood that the

change did not alter the company's decision to terminate his employment, however, Mr. Oelmann accepted the employer's offer to categorize his job separation as a quit for the purpose of saving his employment record. The claimant, however, had been clearly informed by management that he was being discharged, because his final attendance infraction had caused him to exceed the permissible number of points allowed under company policy.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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.

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

An individual who is compelled to resign, given the choice of resigning or being discharged, is not considered to be a voluntary quit, but is considered to have been discharged by the employer.

The Supreme Court of the State of Iowa in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

In the case at hand, the evidence in the record establishes that, although Mr. Oelmann had been excessively absent, his absences were due to illness and had been properly reported. The employer's decision to allow the claimant to resign in lieu of being discharged does not change claimant's job separation into a voluntary quit. The claimant had no option but to resign or face discharge. The employer compelled the claimant to give his resignation.

The question before the administrative law judge, in this matter, is not whether the employer has a right to discharge Mr. Oelmann for this reason, but whether the claimant's job separation is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Mr. Oelmann for excessive absenteeism may have been a sound decision from a management viewpoint, the evidence in the record does not establish work-connected intentional misconduct on the part of the claimant sufficient to warrant the denial of job insurance benefits. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated March 20, 2019, reference 01, is affirmed. Claimant was dismissed under non-disqualifying conditions. Benefits are allowed provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs