

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEONTE D WILLIAMS
Claimant

DEE ZEE INC
Employer

APPEAL 15A-UI-06670-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/29/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 1, 2015, (reference 03) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2015. The claimant participated. The employer participated through Lacey Leichter, Human Resources Assistant. No exhibits were offered or admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time in assembly and was separated from employment on May 17, 2015, when he was discharged for pointing out per the employer's attendance policy.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving 48 points in a rolling twelve month period. One point is given for each hour missed of work, that is not covered by paid time off (PTO). There is not requirement of prior notification of an absence to avoid points, and failure to properly call off a shift does not result in additional points. The claimant had 14 days of PTO available to use. The claimant was made aware of the employer's policy at the time of hire.

The claimant received a warning in May 2014 regarding his attendance points. He was able to monitor his points which were updated, along with available vacation, on the payroll system bi-weekly. The claimant attributed some of his points due to attending his mother's marriage in Chicago, and for taking extra time off around his father's funeral. Before the claimant's May 10, 2015 infraction, he had 44 points. The claimant missed work on May 10, and accrued two points due to transportation issues. The claimant was in a car accident en route to work on

May 12, and missed his entire shift, resulting in eight points. The claimant also missed his shift May 14, 2015, and accrued another eight points. The claimant was unconscious following the accident, and hospitalized until May 16, 2015.

The claimant returned to work on May 17, 2015, when he was discharged for pointing out. The claimant explained to the employer that he had been hospitalized for his prior to shifts and still had his hospital patient bracelet on. The employer testified that in light of the accident, there was nothing the claimant could have done to preserve his job, except not have accrued so many points leading up to the accident, which pushed him over the allowed points for absences. He was subsequently discharged.

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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The employer has the burden of proof in establishing disqualifying job misconduct. 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*, supra; *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*, supra.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. In this case, the employer has no reporting or

notification requirement for an absence. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct.

The final two absences were due to the claimant being in the hospital following a car accident while en route to work. The employer's policy does not distinguish between absences properly called off versus not reported, in terms of disciplinary action to be applied. The claimant credibly testified he was unconscious for part of the time following the accident, and therefore, could not have performed work. The claimant returned to work the following shift after his discharge from the hospital. Cognizant of the strain absenteeism has on the employer, the employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the 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. Since 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.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The June 1, 2015, (reference 03) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/mak