

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATHAN D VALENTINE
Claimant

ROCK COMMUNICATIONS LLC
Employer

APPEAL 18A-UI-08810-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/29/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Admin Code r. 871-24.32(1) – Discharge for Misconduct

STATEMENT OF THE CASE:

Nathan Valentine, Claimant, filed an appeal from the August 15, 2018, (reference 01) unemployment insurance decision that denied benefits because claimant voluntarily quit work with Rock Communications, LLC by refusing to continue working. The parties were properly notified of the hearing. A telephone hearing was held on September 10, 2018 at 3:00 p.m. Claimant participated. Employer participated through Vilene Savage, Human Resources Manager. Employer's Exhibits 1 and 2 were admitted.

ISSUE:

Whether Claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a press operator with Rock Communications, LLC from April 13, 2012 until his employment ended on June 17, 2018. (Savage Testimony) Claimant worked from 7:00 p.m. until 7:00 a.m. with three days on and three days off work. (Savage Testimony)

Rock Communications has a policy regarding job abandonment, which is described as leaving work before the end of a shift without authorization. (Savage Testimony) The handbook states that job abandonment can result in punishment up to and including termination from employment. (Savage Testimony) Claimant received a copy of the company's handbook outlining this policy and signed an acknowledgment of receipt on April 13, 2012. (Savage Testimony) Claimant received a verbal warning regarding his attendance in February 2018. (Savage Testimony)

Claimant left work before the end of his shift on May 30, 2018 without authorization and received a written warning and three-day suspension; claimant signed the written warning on June 14, 2018. (Exhibit 2) The warning states: "I also acknowledge and understand that non-

compliance to the above corrective action may lead to further discipline, up to and including, termination.” (Exhibit 2)

Claimant was scheduled to work from 7:00 p.m. on June 16, 2018 until 7:00 a.m. on June 17, 2018. (Savage Testimony) Claimant reported to work at 6:50 p.m. on June 16th but left on June 17, 2018 at 1:40 a.m. (Savage Testimony) Claimant told a coworker that he was having a panic attack and was leaving work. (Claimant Testimony) Claimant did not report his early departure from work to his direct supervisor. (Claimant Testimony) Claimant knew that leaving work early was against company policy and could place his job in jeopardy. (Claimant Testimony)

On June 17, 2018, Ben Sanders, Production Manager, terminated claimant’s access to the employer’s facility. (Savage Testimony) Two police officers visited claimant at his home on the evening of June 17th and reported to claimant that he had been fired and that he was no longer allowed on the employer’s premises. (Claimant Testimony) Claimant was scheduled to work June 18, 2018 but did not report to work or call in, because he believed that he had been fired. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, claimant did not voluntarily quit his employment with Rock Communications, LLC. Therefore, it is not necessary to evaluate whether there was good cause attributable to the employer.

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying work-related misconduct. Benefits are denied.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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, 11 (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 9; *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. See *Gaborit*, 734 N.W.2d at 555-558. An employer's no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits.

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 v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). 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," *Higgins*, 350 N.W.2d at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper*, 321 N.W.2d at 10.

The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited

absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, 350 N.W.2d at 191.

Excessive absenteeism was found when there were seven unexcused absences in five months; five unexcused absences and three instances of tardiness in eight months; three unexcused absences over an eight-month period; three unexcused absences over seven months; and missing three times after being warned. See *Higgins*, 350 N.W.2d at 192 (Iowa 1984); *Infante v. Iowa Dep't of Job Serv.*, 321 N.W.2d 262 (Iowa App. 1984); *Armel v. EAB*, 2007 WL 3376929*3 (Iowa App. Nov. 15, 2007); *Hiland v. EAB*, No. 12-2300 (Iowa App. July 10, 2013); and *Clark v. Iowa Dep't of Job Serv.*, 317 N.W.2d 517 (Iowa App. 1982).

After receiving a verbal warning about his attendance, claimant left work prior to the end of his shift on two occasions without authorization. Because claimant left work without notifying his supervisor, the absences were not properly reported and, thus, are unexcused. The two unexcused absences occurred within a three-week period. Claimant's second absence occurred just three days after signing the Written Warning with Suspension. Claimant's absences constitute disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The August 15, 2018, (reference 1) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs