

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL J GOODVIN
Claimant

RELCO LOCOMOTIVES INC
Employer

APPEAL 16A-UI-09744-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/23/15
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
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 filed an appeal from the August 26, 2016, (reference 03) unemployment insurance decision that allowed benefits based upon its failure to furnish evidence of deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on September 23, 2016. The claimant Daniel Goodvin did not participate. The employer Relco Locomotives participated through attorney Debra Pettit and Human Resource Manager Tim Ash. Employer's Exhibits 1 through 4 were received into evidence.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any 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 full time as a welder fabricator from January 11, 2016, until this employment ended on July 18, 2016, when he was discharged.

The employer's has an attendance policy in place which provides for two types of leave, Level 1 and Level 2. (Exhibit 4). Employees are given five days of Level 1 absences. Level 1 absences can be used whenever needed and do not require any documentation, but must be properly requested. Employees are given an additional five days of Level 2 absences. Level 2 absences can be used when circumstances arise, as bereavement leave, or for medical emergencies. Level 2 absences also must be properly requested, but documentation is required if less than one week notice is given.

On June 16, 2016, claimant received a written warning for attendance when he exhausted all his Level 1 leave days. The warning notes that he has five Level 2 days remaining and further

attendance violations may lead to termination. (Exhibit 1). Claimant was absent from work due to illness July 11 through 15, 2016. Each day claimant was absent he called in prior to the start of his shift to report that he would not be in to work. Claimant was subsequently discharged on July 18, 2016 for attendance.

The administrative record shows claimant filed a new claim for unemployment insurance benefits with an effective date of August 21, 2016. The claimant filed for and received a total of \$1,788.00 in unemployment insurance benefits for the weeks between August 21, 2016 and September 17, 2016. The employer did not participate in a fact finding interview regarding the separation on August 25, 2016. The fact finder determined claimant qualified for benefits.

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 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.

871 IAC 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*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). 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* 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 no-fault absenteeism policy or point system is not dispositive of the issue of qualification for unemployment insurance benefits. A properly reported absence related to illness or injury is excused for the purpose of Iowa Employment Security Law because it is not volitional. Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit, supra*. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant was terminated when he was absent from work due to illness, exhausting his available leave. Claimant called and properly reported he would not be to work each day he was absent due to illness. Because his 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, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The August 26, 2016, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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