

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROD S CASE
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL 16A-UI-09226-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/24/16
Claimant: Respondent (1)

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:

The employer filed an appeal from the August 17, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 12, 2016. Claimant participated. Employer participated through district manager Scott Miller and store manager Jonathan Matkovich. Employer's Exhibit 1 and 2 were received. Department's Exhibit D-1 was received. Claimant's Exhibit A was received.

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: Claimant began working for employer on March 27, 2014. Claimant last worked as a full-time parts specialist. Claimant was separated from employment on July 25, 2016, when he was terminated.

Employer requires its employees to give at least two hours of notice when they are going to be absent from a scheduled shift. Claimant was aware of the rule.

Toward the end of his employment, claimant missed a lot of work due to an ongoing medical condition. On July 3, 2016, claimant received a written warning for failing to provide his supervisor at least two hours' notice that he was going to be absent. On July 13, 2016, claimant was given a final warning for excessive absenteeism.

Claimant was absent from work on July 18 and 19, 2016, due to his ongoing medical condition. Claimant properly reported the absence on July 18, 2016. Claimant did not properly report the absence on July 19, 2016, because he reported the absence at 7:35 a.m., less than two hours before his shift was scheduled to begin at 9:00 a.m. Claimant briefly came to work on July 20, 2016, but left work early due to his medical condition. While at work, claimant provided his supervisor, Jonathan Matkovich, with a copy of doctor's notes excusing his absences on July 18 and 19, 2016. Matkovich did not say anything to claimant about failing to properly report his absence on July 19, 2016. Claimant was absent on July 21, 2016, due to his medical condition. Claimant did not properly report the absence on July 21, 2016, because he reported the absence at 8:18 a.m., less than two hours before his shift was scheduled to begin at 9:00 a.m. Claimant reported the absence as soon as he knew he would be unable to work that day.

When claimant returned to work on July 25, 2016, he was terminated for excessive absenteeism. Employer did not terminate claimant because he failed to properly report his absences.

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.

A claimant is disqualified from receiving unemployment benefits if the employer discharged the individual for misconduct in connection with the claimant's employment. Iowa Code § 96.5(2)a. 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).

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.

The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984).

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Thus, the first step in the analysis is to determine whether the absences were unexcused. 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 due to properly reported illness are excused, 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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra. However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721 (Minn. Ct. App. 1991). The second step in the analysis is to determine whether the unexcused absences were excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192.

In this case, employer terminated claimant for excessive absenteeism. As noted above, absences due to illness are considered excused for purposes of unemployment law. Thus, claimant's last absence on July 21, 2016, was excused. While it is true that claimant's last absence was not reported at least two hours prior to his scheduled shift, that was not the reason he was terminated. The termination form (Exhibit 1) states claimant was terminated for absenteeism and does not mention that claimant did not properly report the absences. Matkovich did not say anything to claimant about his failure to properly report his absence on July 19, 2016, which would reasonably lead claimant to believe he had no issue with the time he called in to report the absence. Most importantly, employer testified it did not terminate claimant for failing to properly report his absence. Employer testified claimant was terminated for being absent.

Because his last absence was due to 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, employer has failed to establish it terminated claimant for job-related misconduct and benefits are allowed.

Claimant is qualified to receive benefits. Thus, any issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The August 17, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

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