

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AHMED A HODOL**  
Claimant

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**APPEAL 17A-UI-04192-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/19/17**  
**Claimant: Appellant (2-R)**

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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 April 6, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on May 18, 2017. The claimant, Ahmed A. Hodol, participated and was represented by Megan Flynn, Attorney at Law. English/Somali interpretation was provided for the claimant by interpreters Saida (ID 4528) and Mohammad (ID 9100) of CTS Language Link. The employer, Agri Star Meat and Poultry, L.L.C., participated through Laura Roney, Payroll/HR Assistant; Dalana Heins, Health and Safety Foreman; and Abdiwahab Ali, Human Resources. Claimant's Exhibits A through D and Employer's Exhibit 1 was received and admitted into the record.

**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: Claimant was employed full time, most recently as a general laborer, from May 6, 2013, until March 15, 2017, when he was discharged for attendance issues. In October 2016, claimant suffered an injury while at work. He was off work for a period of time related to this injury, and he then returned to work with some restrictions. Among these restrictions, claimant's doctor instructed to work a maximum of four to six hours per day. (Exhibit 1)

Claimant's final attendance infraction occurred on March 14, 2017. Claimant testified that he came to work at 9:20 a.m. that day. Claimant was scheduled to work until 8:30 p.m. or 9:00 p.m. Claimant left work at 12:25 p.m. that day. Claimant testified that his legs were hurting and he was in pain. Roney testified that claimant did not tell anyone that he was leaving that day. Claimant testified he went to the Safety Office and reported to Heins that he was leaving because he was in pain. Claimant testified that he always notified Heins when he was leaving

work. Claimant asked to see the doctor on some occasions and the employer did not permit this.

Claimant received numerous attendance half-points for leaving early during his employment. Specifically, claimant left early on January 30; February 6; February 9; February 12; February 14; February 20; March 1; March 7; March 8; and the final incident on March 14. (Exhibit 1) Claimant received attendance half-points on these occasions because he departed prior to working a minimum of four hours. On each occasion, Roney testified, claimant reported that he had too much pain to continue working. Heins testified that the doctor informed her that claimant was out for his work injury longer than anyone else had been off for a similar injury, in response to Heins mentioning that claimant was having issues performing his job even with restrictions. Roney testified that claimant received several warnings related to his attendance. On February 7, claimant was given a verbal written warning. On February 15, 2017, claimant was given a written warning. On February 23, claimant was given a suspension. Roney testified that on March 13, claimant received a release to return to working full-time hours with some restrictions. The employer did not provide a copy of this release.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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.

### ***Credibility***

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant provided credible testimony regarding the end of his employment. The administrative law judge found claimant's statements to be reasonable and largely consistent. Claimant regularly departed from work early and reported this to Heins, and

the administrative law judge believes claimant's testimony that he did this on March 14. The employer appeared to doubt the veracity of claimant's statements that he was in pain and needed to leave work early routinely. However, it did not provide any evidence to refute claimant's reported pain. The employer testified that claimant had been released to work full days effective March 13, 2017. However, this release was not submitted as an Exhibit. Additionally, it is unclear whether claimant was aware of this release. Moreover, even if claimant was medically cleared to work full days, he credibly testified that he was in pain and needed to leave work. Finally, it appears that claimant was not always provided with an interpreter when communicating with the employer, which may have led to confusion between the two parties.

### ***Discharge for Absenteeism***

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 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). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. 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.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Claimant's final absence was an early departure from work on March 14, 2017. Claimant reported to Heins that he needed to leave because of his pain. Because claimant's 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, the history of other incidents of absenteeism need not be examined. Accordingly, benefits are allowed.

The testimony taken during the hearing indicates that claimant was not physically able to work full-time hours at the time he was separated from employment. Claimant's wage history reflects full-time employment during his base period. Therefore, the administrative law judge will remand this to the Benefits Bureau of Iowa Workforce Development to determine whether claimant is able to work and available for work as required by law.

**DECISION:**

The April 6, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

**REMAND:**

The issue of whether claimant is able to work, available for work, and actively and earnestly seeking work is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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