

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GREG ARNOLD**  
Claimant

**VALLEY CORP**  
Employer

**APPEAL 20A-UI-08322-J1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/07/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 – Voluntary Quit  
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits  
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation  
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

**STATEMENT OF THE CASE:**

On July 24, 2020, the employer filed an appeal from the July 15, 2020, (reference 01) unemployment insurance decision that awarded benefits based on no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 26, 2020. Claimant participated and called Angie Mosier to testify. Employer participated through Chris Vincent, Superintendent and Kris Heuring, Assistant Controller.

Administrative notice was taken of IWD mainframe computer screen DBRO and KPYX concerning the benefits that have been paid in this claim. As of August 25, 2020 claimant had been paid \$4,810.00 in state unemployment benefits and \$3,570.00 in Federal Pandemic Unemployment Compensation (FPUC). The exhibits submitted by the parties were admitted into the record.

**ISSUES:**

Whether claimant was discharged for misconduct?

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

## **FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 27, 2020. Claimant last worked as a full-time laborer/operator on June 4, 2020.

Claimant was terminated on Sunday June 7 for attendance issues. Claimant was considered a No Call/No Show on June 3 and June 4, 2020. The employer does not have a specific No Call/No Show policy. The employer has a general attendance policy that has a progressive disciplinary policy that consists of verbal warning, written warning and then possible termination. The employer issued a written warning on June 3, 2020 for a No Call/No Show and a written warning on June 4, 2020 for No Call/No Show. The employer testified claimant was terminated for the two days of No Call/No Show. The employer deemed the claimant to have voluntarily quit his employment as of June 4, 2020. The employer testified that claimant had received a verbal warning for insubordination, when he was upset at being told to wear safety gear and for being tardy. The employer did not provide dates of those incidents.

Claimant testified that his prior supervisor gave him permission to be off on June 3, 2020. That supervisor was no longer working for the employer on June 3, 2020. Claimant texted work on June 4, 2020, about three hours after work started and told Mr. Vincent he had overslept. Mr. Vincent texted back that claimant should come in next Monday, June 8, 2020. Mr. Vincent called claimant on Sunday, June 7, 2020 and terminated claimant's employment.

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

For the following reason I find that claimant did not voluntarily quit his employment without good cause and is not eligible for unemployment benefits.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Based upon the credible testimony of claimant and Ms. Mosier I find claimant had permission to be absent on June 3, 2020. Claimant called in late on June 4, 2020 and was told to return to work on June 8, 2020. At best, claimant was a one day No Call/No Show. The employer may adopt employment policies that it deems prudent for their business. Those policies do not, however, override Iowa laws and regulations. Claimant did not voluntarily quit his employment.

The next issue to determine is whether claimant committed job related misconduct. I find he did not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

Discharge for misconduct.

(1) Definition.

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 has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In order for a claimant's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past

acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). There is not sufficient evidence to show that claimant's attendance was misconduct. The evidence showed a one-day unexcused absence and a warning about being tardy sometime in the past. The employer has not proven misconduct. The evidence in the record establishes a discharge for no disqualifying reason.

As claimant is eligible for unemployment the overpayment issues are moot.

**DECISION:**

**Regular Unemployment Insurance Benefits Under State Law**

The July 15, 2020, (reference 01) unemployment insurance decision is affirmed. Benefits are awarded, provided he is otherwise eligible.



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James F. Elliott  
Administrative Law Judge

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August 31, 2020  
Decision Dated and Mailed

je/sam