

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KENNETH A SANDERS
Claimant

TPI IOWA LLC
Employer

APPEAL 15A-UI-00577-KCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/03/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 7, 2014 (reference 03) unemployment insurance decision that denied benefits based upon excessive absenteeism. The parties were properly notified about the hearing. A telephone hearing was held on February 6, 2015. The claimant participated. The employer participated through Danielle Williams, Human Resources Coordinator. A supplemental hearing was held on February 20, 2014 with the same party participants. The Employer's Exhibits marked 1 through 6B were admitted into evidence.

ISSUE:

Was the claimant discharged for work-related disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a production worker and was separated from employment on December 4, 2014. The claimant last worked on December 3, 2014. The final absence occurred on November 26, 2014.

The claimant called in before his shift, per company policy, to report that he was unable to work on: October 10, 2014; October 23, 2014; November 21, 2014; and November 26, 2014. The employer's witness had no knowledge of the basis of the absences, only that the claimant called the automated system and left a message before his scheduled shift to report the absence.

The employer has a rolling point system. Absences that are reported by employees before their shifts, by using the employer's call-in system, are considered unexcused if they were not preapproved. They accrue fewer points than those accrued by employees who provide no notice before missing a shift. The claimant accrued points for a variety of reasons, some of which he challenged and were changed due to discrepancies in the time clock or record keeping.

On December 3, 2014 a shift leader gave the claimant a final written attendance warning that stated his attendance must improve immediately or he could face additional disciplinary action up to and including termination. The reported absence was on November 21, 2014 and the document was prepared on November 26, 2014. The claimant had called in before his shift to report the absence. The claimant was terminated effective December 4, 2014 (Exhibit 1).

The claimant had received a written warning on July 28, 2014 and a verbal warning on February 19, 2014 regarding attendance. The claimant was absent in July for medical reasons. The claimant challenged the point accrual in February and three points were removed (Exhibit 3).

One of the claimant's supervisors told him that he had added points on his report that were for clocking in late and the supervisor knew they were incorrect due to problems with the system. Only a portion of the points attributed to lateness were removed due the limitation of the system.

The employer's own accounting of attendance identifies the claimant as having perfect attendance in March, April, June, July, August and September 2014 (Exhibit 4).

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 § 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.

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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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". *Cosper* at 10 holding excused absences are those "with appropriate notice." The employer did not identify the basis of the reported absences and acknowledged that they were notified before the claimant's shift started using the required system.

The employer's system of advising an employee that his/her attendance must improve is very slow. To serve as an adequate and fair warning and permit behavioral change, the notice must be timely and accurate.

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. 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.

Over the course of two hearings, the employer had ample opportunity to provide witnesses with direct knowledge of the basis of the claimant's reported absences. The employer chose not to do so. The employer did not establish that the reported absences were for unreasonable grounds or that his absences were excessive.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Benefits are allowed.

DECISION:

The December 7, 2014 (reference 03) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/can