

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SERGIO QUIROZ

Claimant

APPEAL 21A-UI-10139-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FRESH MEATS CORP

Employer

OC: 01/24/21

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On April 1, 2021, claimant, Sergio Quiroz, filed an appeal from the March 29, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant was discharged from employment with the employer, Smithfield Fresh Meats Corp., due to excessive, unexcused absenteeism. The parties were properly notified about the hearing held by telephone on June 25, 2021. The claimant participated personally. The employer participated through Becky Jacobsen. Claimant's Exhibits A through F were admitted to the hearing record. The employer objected to the admission of Claimant's Exhibit B based on relevance; the objection was overruled. Employer's Exhibit 1 was also admitted to the hearing record. CTS Language Link provided language services for claimant.

ISSUE:

Did the employer discharge the claimant for job related 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 beginning on March 3, 2003, and was separated from employment on February 15, 2021, when he was discharged.

Claimant was terminated on February 15, 2021, for having accumulated 12.5 points under the employer's attendance policy. The employer's policy mandates termination once an employee reached 12 points.

In January 2021, claimant visited Panama. He was supposed to return to the United States on January 17, 2021, and to return to work the following day. However, he became ill while in Panama, and could not return to the United States as planned. He called the employer each day and let it know that he was not going to be able to come to work. However, he could only provide a medical excuse for one day—January 18, 2021—because of the laws in Panama. He was assessed two points per day on January 19, 20, and 21, 2021, which put him at 12.5 points accumulated.

On February 15, 2021, Jacobsen, along with a translator and union steward, inquired with claimant why he had not been able to return to work as planned on January 18, 2021. Claimant told her about the illness that prevented him from flying. Jacobsen told claimant that, if he could provide proof of his original return flight being scheduled for January 17, 2021, the employer would consider it and may not proceed with the termination. Claimant refused to provide proof of his original return flight. Accordingly, the employer proceeded with the termination.

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(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).

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*, 321 N.W.2d at 6; *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*, 734 N.W.2d at 554. 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*, 350 N.W.2d at 192. Second, the absences must be unexcused. *Cosper*, 321 N.W.2d 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*, 350 N.W.2d at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper*, 321 N.W.2d at 10.

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. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct.

The employer admitted that all of the absences contributing to claimant's termination were properly reported. The final absences were also related to illness. The employer has articulated no reason to doubt the truth of claimant's assertion that he could not come back to the United States as planned on January 17, 2021, due to illness and COVID-19 rules relating to flying. Though claimant refused what was arguably a reasonable request to provide proof of his flight that was originally scheduled for January 17, 2021, the employer testified that it would have considered the proof provided; it did not guarantee that claimant would have been able to retain his employment had he provided such proof. Ultimately, claimant's absences were not unexcused, and the employer has not articulated reason to doubt claimant's assertions

regarding the nature of his absences. It has not demonstrated that claimant had excessive, unexcused absences such that he engaged in disqualifying misconduct. Benefits are allowed.

DECISION:

The March 29, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

July 09, 2021
Decision Dated and Mailed

ar/ol