

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MATHEW M WEY
Claimant

APPEAL NO. 16A-UI-05173-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FARMLAND CORP
Employer

OC: 03/27/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 3, 2016, reference 03, which denied unemployment insurance benefits finding the claimant was discharged from work on May 27, 2015 for excessive, unexcused absenteeism. After due notice was provided, a telephone hearing was held on May 18, 2016. Claimant participated. The employer participated by Ms. Beacky Jacobsen, Human Resource Manager. Employer's Exhibit A and Claimant's Exhibit One were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mathew Wey (formerly known as Mathew Wor) was employed by Smithfield Farmland Corp. from June 25, 2013 until May 27, 2015 when he was discharged for exceeding the permissible number of attendance infractions allowed under the company's "no fault" attendance policy. Mr. Wey was employed as a full-time production employee and was paid by the hour.

Mr. Wey was discharged on May 27, 2015 because he had accumulated 12 infraction points under the company's attendance policy during the 12-month rolling period preceding his discharge. Employees are assessed two points for absences and one-half point for a tardy or leaving early and warnings are provided to employees as they accumulate infraction points. Mr. Wey received a final written warning from the company on April 2, 2015. The infraction that caused the claimant to exceed the permissible number of points under the company's attendance system took place on May 14, 2015. Mr. Wey had attended a doctor's appointment earlier that day and had returned to work on the company's second shift. Later, after returning to work, Mr. Wey was notified by the company nurse that because the claimant's doctor had scheduled the surgery for the next morning, May 15, 2015, Mr. Wey should leave work at that time in preparation for the next morning's surgery. The company nurse instructed the claimant to go home. Because Mr. Wey did not have any medical documentation provided to him by the

doctor, company management expected Mr. Wey to remain and to complete the entire eight-hour work shift on the evening of May 14, 2015. It appears that the employer was unaware that the company nurse had instructed the claimant to go home that evening. Mr. Wey attended the surgery appointment the next day and after convalescing was terminated from employment.

In the months leading up to Mr. Wey's termination from employment he had been absent on approximately three occasions and had left early on four or more occasions. Although Mr. Wey had attributed his leaving early or his absences due to illness, the employer did not excuse the absences because the claimant had failed to provide medical documentation supporting the claimant's need to be absent or leave early on each occasion.

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 of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires the consideration of past acts and warnings. The evidence, however, must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibilities such as transportation or oversleeping are considered unexcused. Absences related to illness are considered excused providing the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness or leaving early are forms of absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that the claimant had been absent or left early on a number of occasions and that the claimant had provided notice to the employer that he was unable to come to work or remain at work for medical reasons. The final absence that prompted the decision to terminate Mr. Wey took place when the claimant did not remain at work on May 14, 2015 but left work prior to the end of the work shift because the company nurse had advised him to do so because the claimant had been scheduled for surgery the next morning. Mr. Wey had provided notice to the employer that he was leaving that evening and that the leaving was for medical reasons.

A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. The employer's no fault absenteeism policy is not dispositive of the issue of qualification for benefits. Additions made by the employer requiring additional documentation in order for an absence to be considered excused is not dispositive of the issue of qualification for benefits.

While the decision to terminate Mr. Wey may have been a sound decision from a management viewpoint, the evidence in the record establishes that the claimant's unexcused absences were not excessive and that the claimant's last attendance infraction was properly reported and for medical reasons. Accordingly, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated May 3, 2016, reference 03, is reversed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs