

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATT E ORR
Claimant

QPS EMPLOYMENT GROUP, INC.
Employer

APPEAL 20A-UI-04245-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 4/12/20
Claimant: RESPONDENT (1)

Iowa Code § 96.5(2)A – Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On May 19, 2020, the employer filed an appeal from the May 14, 2020, (reference 01) unemployment insurance decision that granted benefits based on failure of the employer to offer evidence of job related misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 4, 2020. Claimant participated. Employer participated through Jaydon Prunchak, Senior Recruiter and Mai Lor, Unemployment Specialist.

ISSUES:

Whether claimant committed job related misconduct.
Whether claimant voluntarily quit his employment without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 29, 2019. Claimant last worked full-time on March 23, 2020. Claimant was terminated on April 15, 2020. The employer deem claimant to have abandoned his job assignment at Wilton Precision Steel.

The employer QPS Employment Group, Inc. (QPS) is a temporary employment agency. Claimant's first work assignment by QPS was from April 29, 2019 through July 31, 2019 at Wilton Precision Steel. Claimant was next assigned to work for Wilton Steel processing from August 8, 2019 through August 15, 2019. Claimant last assignment by QPS was at Wilton Precision Steel from November 25, 2020 until he was terminate on April 15, 2020.

On March 24, 2020 claimant reported cough symptoms to QPS and Wilton Precision Steel. Claimant was directed to contact the HR department at QPS and advised not to go to work. Claimant call in on March 29 and 30, 2020. Claimant reported to QPS he had pneumonia on April1, 2020.

On April 3, 2020 QPS spoke to claimant and requested that he provide a note from a doctor that claimant had permission to return to work. Ms. Prunchak testified claimant did not provide any

doctor's not to QPS. Ms. Prunchak stated that Wilton Precision Steel wanted the claimant to return to work. When QPS did not hear from claimant by April 15, 2020. QPS deemed that claimant had abandoned his job and terminated his employment at QPS. Ms. Prunchak testified that work was available at Wilton Precision Steel until he was terminated by QPS.

Claimant reported symptoms of cough to QPS and Wilton Precision Steel on March 23, 2020. Claimant said he was directed to contact HR at QPS as the procedure he should follow. Claimant said the QPS HR department assisted him in finding a physician he could see as access to medical care was limited due to Covid-19. Claimant said that his doctor released him to return to work as of April 8, 2020. Claimant testified that he had many difficulties in communicating and receiving returned phone and text messages.

Claimant photographed the note from his doctor and sent it to QPS via text. On April 6, 2020 claimant texted QPS to inform QPS that he had spoken to Gregg Gonzalez at Wilton Precision Steel who said he could come back and inquired of QPS as to when he could return to work. Claimant also sent text messages inquiring of his status on April 11 and April 13, 2020 to QPS and did not hear any response from QPS.

REASONING AND CONCLUSIONS OF LAW:

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's testimony that he texted the doctor's note allowing him to return to work and that he texted on April 6, 2020 that he was willing to come back to work was credible. I find it was credible that there was confusion with QPS in providing the text messaged to the Davenport office.

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.

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. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins*, supra.

I find that claimant was terminated by QPS for no disqualifiable reason. Claimant promptly and responsibly notified his employer of symptoms and followed the protocol that the HR Department of QPS recommended. Claimant obtained medical care and a medical release. Claimant followed procedures in communicating with QPS. I find claimant notified his employer on April 6, 2020 about his desire to return to work, was medically eligible to work as of April 8, 2020. Claimant tried two other times before his termination to determine his work status. Claimant did not have excessive unexcused absences nor did he abandon his job. His employer's communication system did not properly convey the information to the Davenport QPS office.

Claimant was terminated from QPS, not just his job assignment. As such he did not have an obligation to return and report for additional work assignments under Iowa Code § 96.5(1)(j). Claimant did not quit his employment, but was terminated.

DECISION:

The May 14, 2020, reference 01 decision is affirmed. Claimant was discharged from employment for no disqualifying reason.



James F. Elliott
Administrative Law Judge

June 19, 2020
Decision Dated and Mailed

je/scn